# VOLUME II TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1952

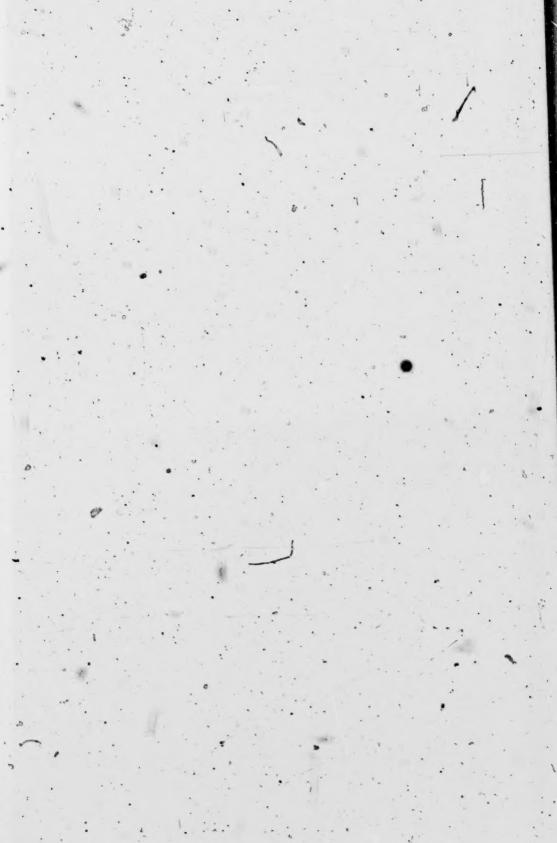
No. 75

FEDERAL TRADE COMMISSION, PETITIONER

MOTION PICTURE ADVERTISING SERVICE COMPANY?

ON WRIT OF CHRISTIANI TO THE UNITED STATES COURT OF

CERTICHARI GRANTED OUTOBER 15, 1952



#### IN THE

# United States Court of Appeals

No. 13,493

MOTION PICTURE ADVERTISING SERVICE COMPANY, INC.,
PETITIONER

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· FEDERAL TRADE COMMISSION,

RESPONDENT

## PETITION TO REVIEW ORDER OF FEDERAL TRADE COMMISSION, SITTING AT WASHINGTON, D. C.

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In the Matter of MOTION PICTURE ADVERTISING SERVICE CO., INC.

Docket No. 5498

## PORTIONS OF THE TRANSCRIPT OF TESTIMONY TAKEN AT VARIOUS HEARINGS

[12] Mr. Rosen: Counsel for Respondent offers in connection with the plea of res adjudicata two letters, the first being a letter from Delos C. Johns addressed to Mr. Everett F. Haycraft, dated August 6, 1943, which I will mark Respondent's Exhibit 1-A and 1-B for identification.

(The letter referred to was marked Respondent's Exhibit 1-A and 1-B for identification.)

Mr. Rosen: The other is a letter from Mr. Johns addressed to Louis L. Rosen, Stan D. Donnelly and [13] Tom M. Burgess, dated August 12, 1943, which I will mark Respondent's Exhibits 2-A and 2-B for identification.

(The letter referred to was marked Respondent's Exhibits 2-A and 2-B for identification.)

Mr. ROSEN: In connection with the offer of said two letters, Counsel states that both of them were submitted to Mr. Haycraft yesterday. He stated he recalled the matter and that the statements made by Mr. Johns in the letter of August 12th with reference to a telephone conversation with Mr. Haycraft correctly set forth the facts.

Trial Examiner HIER: Mr. Collins, do you have any objection to those letters?

Mr. Collins: I object to the introduction of them. I don't make any objection as to the identity of the letters and I don't make any objection as to the statements made with reference to Mr. Haycraft's statement, because I will admit that Mr. Haycraft says that the

letters set forth substantially what the conversation was.

Trial Examiner HIER: What is the ground of your

objection?

Mr. Collins: I object to the admissibility of the letters for the simple reason that Mr. Haycraft hasn't got the authority and didn't have the authority at the date of these letters, and he hasn't got the authority today, to

speak for or on behalf of the Federal Trade Com-

[14] mission.

Mr. Rosen: The issue involved in the plea of res adjudicata is simply whether or not the issue presented in the present case was presented in the former proceeding against this same Respondent. There is some ambiguity and doubt as to whether or not the former proceeding embraced the same complaint that is here made, and in my opinion, the correspondence that has been offered here clears up any possible ambiguity as to whether or not this issue, as to the right to enter into exclusive contracts, was an issue in the former proceeding and was considered by the Commission in that matter. Now it does seem to me that the attorney in charge in his statement on this subject would help to clear up that ambiguity.

Trial Examiner HIER: Let's see if I have got this straight. You have got to have identity of parties and identity of issues to sustain this plea. The identity of parties is, of course, unquestioned. The identity of issues is in question. On the face of it, the complaint before you is a conspiracy combination complaint, charging fixation of these rates by conspiracy between you four and others, and the exclusive contracts which were individually used were brought in as implementing that conspiracy. The order, as I read it, is confined to collective action, cooperative action. The only point at issue, if I understand your answer in the former case,

is whether or not the attorney for the Commission.

[15] at that time, Mr. Haycraft, put in issue in the case by his brief the further question of whether or not the parties in that case could individually use these exclusive contracts.

Mr. Rosen: Precisely.

Trial Examiner HIER: And the record in the case does not disclose whether or not the order, by ignoring that portion of his brief, considered it on the merits and rejected it or considered it outside the scope of the complaint.

Mr. Rosen: You stated it precisely.

Trial Examiner HIER: Now if they did the former, you may have something to argue about; if they did the latter, they are out of court, so to speak. I think that is the point, as I gather it, and since I can't pass on this matter and only the Commission can, I think that I should admit these exhibits, Mr. Collins, and let the body who is passing on the merits of that plea accept or reject this evidence.

I have some question in my mind as to whether it belongs in this record or whether it shouldn't more properly be attached to your application or brief on the point, but you want to get it of record in the Commission somewhere.

Mr. ROSEN: The reason for getting it in the record somewhere is so that I can argue it. I don't want the

Commission later when I argue it to say it isn't [16] in the case. Otherwise I would have to take the testimony of Mr. Johns and Mr. Haycraft, and I wanted to obviate that.

Trial Examiner HIER: For those reasons and for that purpose, I will overrule the objection and accept these documents as Respondent's Exhibits 1-A and 1-B and

2-A and 2-B in this case.

(The documents referred to, heretofore marked for identification as Respondent's Exhibits 1-A and 1-B and 2-A and 2-B, were received in evidence.)

Mr. Collins: I would like to take exception to the rul-

ing of the Trial Examiner on that point.

[76]. T. B. GRINSPAN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Q/ (By Mr. COLLINS:) Mr. Grinspan, will you please

state your name and address and spell your name.

A. T. B. Grinspan, G-r-i-n-s-p-a-n, 1700 Keo Way, Des Moines.

Q. Mr. Grinspan, in what business are you engaged?

A. Engaged in the production of film advertising, theater trailers and industrial film 1635.

Q. How long have you been so engaged?

The Company has been in business twenty-eight or twenty-nine years. I have been there ten years.

Q. You have been connected with the Company about

ten years?

Right.
What is the name of the Company? [77]

A. There are two companies, Parrot Distributing Company and Parrot Films Studio.

#### CROSS-EXAMINATION [85]

Q. (By Mr. DONNELLY:) Mr. Grinspan, you mention the peak of your business. When was that?

You mean on library films?

Q. Well, let's say those first, yes.

1938 to 1939.

And do you intend-is it in your answer on direct when you said "peak", the peak of all your business?

The volume declined greatly during the war. There was an extreme shortage of film and the [86] business has been building up in 1946 and 1947.

#### REDIRECT EXAMINATION [87]

Q. (By Mr. COLLINS:) Mr. Grinspan, when was the peak of the business, would you say, in the library film business?

A. 1938 and 1939. After that it started to drop off.

Q. It started to drop off after 1938 and 1939.

Now, was the dropping off of your business caused by the lack of available films?

A. I am in no position to state definitely what caused the dropping off so far as my personal knowledge is concerned.

Mr. Donnelly: In view of the answers of the witness thus far I object to any further answers as being speculative and hearsay.

Trial Examiner Kolb: Sustained.

[156] Q. To the best of your recollection, the theater managers told you they were under exclusive contract with United?

A. Well, I wouldn't say whether it was United or Alexander in that case. I don't remember; I don't recall, one of the two of them. In fact, the only competition that I saw was the Alexander and United in my territory. That is all I ever ran into was United or Alexander, one of the two of them.

[231] W. B. REICHART was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION

Q. (By Mr. COLLINS:) Mr. Reichart, try to keep your voice up so the reporter can hear what you say, whether any of the rest of us do or not. Mr. Reichart, where do you live?

A. Baytown, Texas.

Q. And how long have you lived there?

A. Two years.

Q. Where did you live before that?

A. In Houston, Texas.

Q. In what business were you engaged?

A. Theatre advertising.

Q. Now long have you been engaged in that business?

A. Seven years.

Q. You began, then, in 1941?

A. 1941.

Q. And wher you started in the film advertising business, did you start in by yourself, or were you employed by someone?

A. I was employed in 1939 by Alexander,

[232] Q. How long did you work for Alexander?
A. Approximately one year.

.Q. What were your duties with Alexander?

A. Soliciting advertising from the theatres for Alexander.

Q. Did you make any contracts with the theatres?

A. Yes, sir.

Q. For what purpose?

A. For taking good will, and any new theatres that were being put up, to secure or obtain contracts for Alexander so we could sell motion picture advertising.

Q. Now, after you left Alexander, what did you do?

A. I went in business for myself, selling motion picture advertising.

Q. Now, after you left Alexander, explain to us just

the nature of your business, Mr. Reichart.

A. The nature of my business was to obtain theatre contracts from theatre owners for the privilege of selling advertisers film advertising to be displayed on their screens.

[235] Q. Now, why did you stop showing films at the Mitchell Lewis Theatres?

A. I was told in 1945 that he had signed a contract with M. P. A.

[236] Q. Now, did you ever have any business relationship with the Jefferson Amusement Company?

A. Yes.

Q. Is that a chain of theatres or one?

A. It is a chain.

Q. How many theatres?

A. Forty some odd.

Q. I beg pardon?

A. Forty some odd.

Q. Where are they located?

A. In East Texas, Louisiana, and South Texas.

Q. Did you ever have any film advertisements screened on the screens of the Jefferson Amusement Company theatres?

A. Yes, sir.

Q. For what period of time?

A. Two or three weeks at a time.

Q. And during what years?

A. I would like to ask a question on that, to refresh my memory only, and state that that was before M. P. A.

got that contract-I don't know whether you got

[237] that contract in '45 or '46?

Q. It was in '45. So until 1945, then-No, not from 1941.

Q. Well, when did you begin? A. In '44 or '43 with Jefferson In '44 or '43 with Jefferson.

Q. Now, do you recall how many theatres of that chain you screened advertisements at?

A. I think it was only two or three.

Only two or three. Now, when did you say that you stopped-in what year?

A. In 1945.

Now, can you tell us the reason you stopped?

The reason I stopped was because M. P. A. had the contract.

Q. Where did you get that information?

From the Jefferson Amusement officials.

Located where?

A. At Beaumont, Texas. Sam Landra is his name.

Q. And what was his position with the Jefferson Amusement Company?

A. Vice-president.

Q. And how did you contact him-by mail, or how?

A. I contacted him by telephone.

By telephone. And do you recall what the conversation was-what you said to him?

A. Not word for word, but I remember that I did have some film to show at some of their theatres in/the Tri-Cities and he told me he was sorry, he couldn't show them, I would have to take it up with M. P. A., because he had given the contract to M. P. A.

You said something about the Tri-Cities. , What are the Tri-Cities?

Baytown, Goose Creek, and Peily, Texas.

Q. Baytown, Goose Creek, and what?

A. Pelly-now known as Greater Baytown.

I believe you said that you are not in the film advertising business now?

I am not active in it.

Q. Why aren't you actively in it, Mr. Reichart?

A. I did not have enough theatres to make any money.

Q. You did not have enough theatres?

A. No.

Q. Have you tried to get the theatres?

A. Not in the last year, because I was aware of the contracts—being a tradesman and in the business, I was aware of these contracts, and I felt the contracts were vital.

### [239] CROSS-EXAMINATION

Q. (By Mr. Rosen:) Mr. Reichart, had you any previous experience in motion picture advertising business before you went to work for Alexander in 1939?

A. Not to the extent of actually participating in the manufacture of motion pictures, but I had been in advertising work, and had been for some time in the agency advertising business. I know the advertising

situation.

Q. As I understand it, sir, there are three important phases to this business—see if I am not correct? One is the securing of advertising contracts from advertisers; second, is the production of the advertising films to be displayed, and third, is the securing of screen privileges from theatres whereon the films are to be displayed for the benefit of the advertiser? Is that correct?

A. That constitutes the siness, but I would say the number one subject would be the securing of the theatre.

Q. I was not trying to put them in the order of importance, but merely to state that the screen advertising business comprises those three main elements—is that correct?

A. That is correct.

Q. Some screen advertising companies engage in one or more phases of that business—is that right?

A. State that again.

Q. Withdraw that. Let me rephrase it. Some companies engage in the business of merely obtaining advertising from the advertisers and restrict their activity to that one phase—is that correct?

A. I have heard of such companies.

Q. And those concerns obtain their compensation either by getting a commission on the advertising sold or by getting paid by the advertiser, some rate of compensation for their services?

A. That is correct.

Q. Other companies engage solely in the production of films—advertising films or other films—is that correct?

A. That is correct.

Q. And there are other concerns, such as Motion Picture Advertising Service Company, engaged in all three phases of the business?

A. That is correct.

Q. Is there any advantage to the distributor, such as courself or M. P. A., to obtaining a contract from a theatre under which the distributor and the distributor alone is the one, during the time of the contract, that would have the right to display motion picture advertising on the screen?

[241] Mr. COLLINS: I object.

Trial Examiner Kolb: Just a minute—what connection does that have with the theory of your defense. Mr. Rosen?

Mr. ROSEN: If the Trial Examiner please, the Government's charge in the complaint against us is that we have violated Section V of the Federal-Trade Commission Act, in that we have obtained exclusive film agreements-that this constitutes unfair competition, and the prayer is that a Cease and Desist Order be obtained restraining the Respondent from obtaining exclusive theatre screen agreements. I think it is pertinent to the inquiry to eascertain the nature of this business the practical effect of the way the business is now being run and the practical effect of such a Cease and Desist Order on the screen in general. How can the Federal Trade Commission possibly determine whether such a contract as it denounces here is unfair competition unless it first knows the nature of the business, the result that would be created by the prohibition of such a condition in a contract on both the theatres and the distributors? I submit it is perfectly wrong. After all, it is up to the Commission to make up its mind if such a clause is legal, but in order to make up its mind it must find out what the effect is on the industry.

Trial Examiner Kolb: Whether a contract would be advantageous to a theatre or not, I don't think would be material; furthermore, this witness is not qualified to answer that question. The objection will be sustained.

Q. (By Mr. ROSEN:) Mr. Reichart, is it not a fact that in your experience in this business, all of the theatres limit the amount of screen advertising to be displayed on their screens?

A. Yes.

Q. Why so?

A. Because with too many screen ads it has been proven that it annoys the paying customers who pay to get in the theatre, not to see the ads but to see the picture itself, and the prime interest of the theatre man is not to display advertising but to exhibit motion pictures.

Q. Does that limitation on the part of the advertising films vary with the different theatres involved?

A. Yes; each owner will have a right to make up his mind which will be and which will not be the definite amount of advantage.

Q. Would you say it will run, on the average, about four films per performance?

A. It has been proven over the years that the average theatre would like to have no more than four.

Q. In the cases where a theatre undertook to [243] make a theatre screen agreement with more than one distributor at the same time, wouldn't it be probable that the distributor would be shipping in films to be displayed after making contracts with the advertisers for the display of the film, after producing or having produced for it the film and then find that the other distributor or others with theatre screen agreements had filled the screen so that those films could not be displayed that week, or that performance?

m

hi

af

Mr. Collins want to object to that.

Mr. Rosen: Maybe my question was a little long.

Trial Examiner Kolb: It was rather involved-I will

say that.

Mr. Collins: I think I understood the question. It is not a question of what the probability may be, or anything of that kind. It is my contention that those things have nothing to do whatever with the issues in this case—their likes or dislikes of any parties—the advantage or disadvantages to any party, because the law has determined that such things are a violation of the law, and it does not say a thing in the world about the advantages or disadvantages involved.

Trial Examiner Kolb: We have had a lot of testimony as to the method of operation and, in view of that, I consider a question as to the difficulties involved in two

contracts in one theatre as being competent. The

[244] objection will be overruled.

Q. (By Mr. Rosen:) If you can answer my question without my rephrasing it—if you understood it?

A. I can answer it.

I wish you would do so.

A. I would say, from my experience over these years, which are seven or eight, that it is disadvantageous to every one concerned.

Q. For what?

A. For a position to exist where a theatre has more than one contract with distributors unless that theatre specifies in his contract that the distributor who obtains the contract with the theatre will only be allowed so many ads per week and the dates specified.

Q. As I understand your answer, you stated that your experience in the industry has led you to believe that it would be disadvantageous for all concerned—meaning everybody—the theatre and the distributor?

A. And the advertiser, because he would be wanting his ad on the screen and he could not get it on there after he had bought it, in fact.

Trial Examiner Kolb: Counsel, you are getting away from the line of questioning I allowed that on. It is

not a question of advantage or disadvantage to [245] the theatre or anybody else—you can ask him about that, but when you are asking that at this time, you are getting into the conclusion of the witness. I do not think it is proper.

Mr. ROSEN: I will try to limit myself to the facts.

His conclusion is naturally based on the facts.

Q. (By Mr. ROSEN:) What are the practical difficulties, in so far as the distributor is concerned, if he has to display advertising films on a screen which has contracts at the same time with other distributors?

A. There would not be any difficulty at all—like I stated, if the space would be available, but he would know whether or not the space would be available in

advance.

Q. And if the space had been filled up, by one of the other distributors, what would be the result of your efforts in such a case?

A. I would have to wait—I would have to ask the advertiser if he would take another week. If he would, I would display the ad then; if not, I would have to cancel the order.

Q. Would the contract with the advertiser require the display of the film over a particular period of time?

A. Yes, sir.

Q. So that in such a case, if the theatre screen was filled with other advertising of other distribu-

[246] tors, that contract with the advertiser would have to be broken, would it not?

A. Yes, sir.

Q. When you said a moment ago that it was disadvantageous to the advertiser, that, no doubt, is what you meant?

A. That is correct.

Q. Similarly, would it not be disadvantageous to the particular distributor who had expended the effort of selling the advertising, made up the films, paid the advertising commission, and then found that he could not have those films displayed in a particular performance or a particular week.

The WITNESS: Please read the question,

(Question read by the reporter, as above recorded.)

A. Under those circumstances, if that distributor would be working, I would say that would be at his own risk.

Q. It would be at his own risk, but undoubtedly in some cases he would conflict with others and could not

get the advertising display at the time he wanted.

A. It would be free enterprise—that would just be

the chance hel would be taking.

Q. I asked you a question, though, Mr. Reichart, whether it would be disadvantageous to the distributor in such circumstances?

[247] A. I beg your pardon.

Q. I understood you to say that it was disadvantageous in your opinion, to all concerned. I was trying to show the practical difficulties of doing business in the way the Government suggests it be done.

A. I say it would be a disadvantage to the distribu-

tor; yes.

Q. For the reasons I have stated?

For the reasons that the testimony is bringing out.

Q. Sir?

A. For the reason that the testimony shows.

Q. Now, taking up the practical difficulties with regard to the theatre itself, if, as you say, the theatres or most of them limit the advertising to four films per performance, what is the disadvantage or practical difficulty to the theatre in doing business with more than one distributor at the same time?

Ac He makes enemies in the majority of cases because the advertisers, 90 per cent. of the time are his neighbors, attend his theatre, it would be an embarrassment to the advertiser and the theatre man, because the theatre man, himself, just wouldn't know what it was

all about.

Q. Suppose the theatre man should get in from each of these\five distributors three films per performance and he would be limited to four per performance then

he would have fifteen on hand-how many would

[248] he show?

Mr. Collins: Mr. Examiner, that is just going beyond all reason. I object.

Trial Examiner Kolb: The objection will be sustained. Mr. Rosen: I submit it is proper cross-examination.

Trial Examiner Kolb I don't know where you are

leading up to.

Q. (By Mr. Rosen:) Mr. Reichart, you have been in this business from 1939 up until when—1947?

A. That is correct.

Q. Has there or has there not been free competition in the securing of theatre screen agreements?

Mr. COLLINS: I want to object to that.

Trial Examiner Kolb: The objection will be sustained. That is the question which the Commission is going to have to decide.

Mr. ROSEN: I can go into the fact-that was merely

introductory to a question.

Trial Examiner KOLB: The witness is not qualified to state that.

Mr. ROSEN: This is cross-examination—he is not my witness.

[249] Trial Examiner Kolb: You can question the witness, but that question is not competent.

Q. (By Mr. ROSEN:) Mr. Reichart, I will get at it another way. You have stated that you handled, among other things, that part of your business was in connection with the securing of theatre screen agreements, did you not?

A. That is right—I did.

Q. What considerations moved the theatre to give you a contract over that of your competitors?

Mr. COLLINS: I object to that.

Mr. ROSEN: That is certainly an issue of facts.

Trial Examiner Kolb: Read the question.

(The pending question was read by the Reporter.)
Trial Examiner Kolb: The objection will be sustained.

Q. (By Mr. ROSEN:) When you went in to secure theatre screen agreements, were those contracts made upon the basis of so much per advertisement or were they made by you on the basis of some guarantee over a given period of time?

A. On a per ad basis so much per ad.

Q. Did your ever, in your experience, have any con-

tracts under which you guaranteed a minimum consideration to the theatre?

A. No.

[250] Q. Was that in all of the contracts that you made with theatres in which you were paying the theatre a certain rate per advertisement, the amount that would be due the theatre would depend upon the number of ads that you could sell for that theatre during the period of the contract, would it not?

A. That is right.

Q. And if you sold four ads, they got paid at that rate, and if you sold no ads, they got no consideration—is that correct?

A. That is correct.

Q. In your experience with this business, were there any contracts made in the industry under which the theatre was guaranteed a certain amount, irrespective of whether advertising was sold or not by the distributor?

A. Yes.

Q. and those were minimum quantities, weren't they?

A. I don't know what you mean by "minimum".

Q. I mean that the theatre got the guarantee, whether one or more ads were sold?

A. That is correct.

Q. I notice that you stated that in connection with the Jefferson Amusement Company, which had forty theatres, that you exhibited motion picture advertising

in three of the forty-did I get you right?

[251] • A. That is correct.

Jefferson Amusement Company on the other thirty-seven?

A. Yes.

Q. Had you already sold advertising for those thirty-seven theatres?

As No.

- Q. What kind of a contract was it you tried to obtain from that concern—the circuit?
- A. I tried to obtain any sort of a contract, on a per ad basis or a guarantee.

Q. And they let you exhibit advertising in three, but

not in the other thirty-seven?

A. At the time that I was allowed to exhibit this advertising, the Jefferson Amusement Company had consummated their contract with Alexander, who previously had the contract before M. P. A., and the time that I exhibited was time elapsed between the Alexander contract and the M. P. A. contract. At that time, it was just a matter of courtesy, that they would allow any one to run an ad on their theatre.

Q. Did you ever make an attempt to secure screen privileges with that circuit after you saw Alexander's contract had expired?

A. Yes.

[252] Q. For the whole circuit?

A. Yes.

Q. But not offering to pay them any guarantee for the whole forty theatres?

A. Not as much as they wanted.

Q. Not anything?

A. Yes.

Q. What was the basis you offered?

A. Three dollars per ad basis for all their theatres with a guarantee of three and an option for four.

Q. State that again. Now, repeat that for me as to what your guarantee meant, so I will understand it.

A. I would guarantee three ads per week per theatre, with an option to put one or more ads, which would make four which they would take, and pay at the same rate, or \$3.00 for the additional ad, and the total would be \$12.00 per week per theatre.

Q. And that was the minimum, whether you sold

any more or not?

A. Yes.

Q. For the whole circuit of theatres?

A Yes, sir.

Q. What did they want?

A. \$7.50.

[253] Q. You were not willing to meet that?

A. No, Sir, I was not willing to meet that.

Q. Was there any other case that comes to your mind in which you tried to secure the theatres on some exclusive basis by offering a guarantee?

A. Yes.

Q. I don't mean this circuit—any others?

A. Yes-Long.

Q Long?

A. Yes.

Q. How many theatres did they have?

A. I don't remember.

Q. Just give us an approximation?

A. About forty-five-approximately thirty.

Q. What did you offer them?

- A. \$3.50 with the exception of the Metropolitan Theatres; I offered them \$5.00 on the Metropolitan Theatres.
- Q. Was that subsequent to the time they had contracted with Alexander?

A. Yes.

Q. Why did they turn you down?

A. They wanted more money.

Q. Was Alexander paying them more money?

A. At that time M. P. A. had the circuit—I think you had a split with them—a split service.

Q. What I mean to say is this—were you going in and offering to pay the theatre more money than they were getting or less money?

A. Less money than they were getting.

Q. So, in other words, they would not give you the theatre screens because your offer was less than what they were getting?

A. That is right.

Q. And the same thing is true with the efferson Amusement Company—they were able to secure more money from your competitors than you were willing to pay, and for that reason they would not give you the forty theatres—is that right?

A. That is right.

Q. And it is to your knowledge, is it not, that the two distributors whose cases are being tried here today, Alexander and M. P. A., are in open and free competition

with each other for these very screens that you have been talking about?

Mr. COLLINS: I object to that.

Trial Examiner Kolb: Read the question.

(The pending question was read by the reporter.)

Off the record.

Trial Examiner Kolb: The objection will be sustained.

(Discussion off the record.)

Q. (By Mr. ROSEN:) Mr. Reichart, in the cases which you have tried to secure screens for your own company, is it or is it not a fact that Alexander has been in competition with you for the obtaining of those screens?

Mr. COLLINS: I object to that.

Trial Examiner Kolb: The objection will be overruled.

Mr. ROSEN: You can answer the question.

A. Yes.

Q. Is it also true that M. P. A. has been in competition with you for the obtaining of those screens?

A. Yes.

[256].

Q. Is it also true that all three of you have been in a competition with each other for those screens?

A. To the best of my knowledge, it is true.

Q. And the theatre makes up its mind, so far as you know, to give the contract to the one that offers them the most money or the best service, or both—isn't that true?

Mr. COLLINS: I object to that.

Trial Examiner Kolb: The objection is sustained

The WITNESS: I think-

Trial Examiner KOLB: The objection is sustained.

The WITNESS: Pardon me.

Q. (By Mr. Rosen) Have you ever had occasion to offer M. P. A. advertising which you had obtained for exhibition on theatre screens under contract to M. P. A.?

A. Yes. .
Q. Have they refused to exhibit the films?

A. Not when possible. Q. By that, I assume that you mean that when the theatre screens were filled up for the particular time you wanted, they refused; but at other times, accepted

the advertising?

A. I would leave it to their integrity and the fact that they did not have the space outside of that, I would know if they were trying to keep me off.

Q. Weren't there numerous times when they ac-

cepted the advertising?

A. That is right.

Q. And only the exceptional case was when they turned it down?

A. That is right.

Q. And those cases, when they turned it down, they told you it was because their theatre screens were filled?

A. That is correct.

Q. And in the cases in which they did exhibit the advertising that you wanted exhibited, you were paid the customary commission, were you not, of 15 per cent. less 2 per cent. discount—I should say, plus the 2 per cent. discount?

A. I was allowed that commission.

Q - Isn't that the usual advertising commission in the industry?

A. That is the usual advertising commission

[257] in the industry.

[261] RECROSS-EXAMINATION

Q. (By Mr. Rosen:) Mr. Reichart, I understood, on Redirect Examination, that there was a question asked by Mr. Collins in which you said you did not think you could answer it fairly unless he pointed out whether he was talking about M. P. A. or Alexander in connection with your inability to screen the advertising for certain clients of yours. Did you not say that?

A. That is correct.

Q. Am I to understand from that statement [262] that you had to know what company he was talking about? That you meant—suppose you state the explanation of it—in other words, with regard to M. P. A., what would you have to say on that question?

A. Is that a fair question?

Q. I want the record to be fair.

A. Yes, I know what you are trying to state there. I never had that experience with M. P. A.

Q. What kind of an experience?

A. They never turned me down, like I have testified here before, that I always believed that they would give me the privilege of screening an ad provided they had space on a theatre where they had a contract.

Q. Let me ask you another question, Sir. It it not a fact that when you went out and did business directly with the theatre and got contracts to screen advertising, that you sold the advertiser, that you were limited in that case to the particular theatre which gave you the screen privileges—is that right?

A. You are asking if I was limited to the theatres

where I had contracts?

Q. In those cases in which you got the screen privileges and then showed the ads, you were limited to the exhibition of those ads on the particular screens you had secured?

A. That is correct—to a point.

[263] Q. When you undertake to exhibit those films on screens that M. P. A. had, what wider circulation, in that they had more screen contracts than you had?

A. That is right.

Q. And, therefore, could you render a better service for your advertiser by getting him a wider distribution than you, yourself, could secure with your limited or-

ganization?

A. That would be true except in knowing whether or not space would be open in any theatre where M. P. A. had the contract, I would first have to confirm it with them, which would be a disadvantage—I would first have to confirm it with M. P. A. and if they confirmed it, then I could run the ad.

Q. And you had to find out from the theatres whether

they would screen the advertising for you?

A. I would know that because I had the contract with that theatre.

Q. With those non-exclusive contracts that you had?

A. That is right.

Q. Could you not, under those non-exclusive contracts, know whether other distributors had preempted the screens?

A. Not unless we kept up with that with the theatre owner.

Q. In that case, wouldn't you have to find out from the owner whether there was room for your ads?

A. Yes, sir.

[264] Q. And in the latter case you would have to find out from M. P. A. whether they had room for your ads?

A. That is right.

Q. I would like to show you a letter written by you to Mr. Mabry, of Motion Picture Advertising Sales Company, dated October 19, 1945, which I will ask to be marked for identification Respondent's Exhibit 1, Docket 5498

(The letter referred to was marked Respondent's Exhibit 1 for identification.)

Q. (Continuing) I will ask you if that is a letter which you wrote to Mr. Mabry, of Motion Picture Advertising Sales Company, on October 19, 1945?

A. That is right.

Q. In whose handwriting is the writing at the bottom of the typed letter?

A. That is mine.

Mr. ROSEN: On behalf of Respondent, I offer to introduce and file in evidence Respondent's Exhibit No. 1.

Trial Examiner KOLB: There being no objection, the letter will be admitted as Respondent's Exhibit No. 1.

(The letter referred to, heretofore marked for identification Respondent's Exhibit 1, was received in evidence.)

Q. (By Mr. Rosen: Mr. Reichart, I notice [265] that in the letter you say: "Thank you very much for your kind letter giving us permission to run our trailers on screens controlled by you." Then, in the next paragraph, there are listed the names of the towns, and there are several, in the letter, that speak for themselves—did you at any time have available for

the advertising that you sold, those particular towns mentioned in this letter?

A. No.

Q. So that those referred to in the letter were not towns in which there were theatres that you have had contracts with?

A. No: I never had any contract with these theatres.

Q. And in the place mentioned, the advertiser, Fresh Air Circulating Fan Company, wanted its advertising displayed in theatres in the towns mentioned?

A. That is right.

Mr. POSEN: That is all.

[268] ROBERT WEIGAND was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION

Q. (By Mr. COLLINS) State your full name, please. .

A. Robert Weigand.

Q. Mr. Weigand, what connection, if any, do you have with the Commerce Picture Sales, Inc.?

A. Vice-President.

Q. How long have you been connected with Commerce Picture Sales, Inc.?

A. Since its beginning, August, 1941.

Q. And what is the nature of the business of the Commerce Picture Sales, Inc.?

A. The production and distribution of motion pic-

tures for advertising and some other purposes.

Q. Now, in connection with the production and distribution of advertising films, just what does the Commerce Picture Sales, Inc. do?

Well, we produce a library of films for the use of advertisers in a general way. We con-

tact theatres for the privilege, and obtain from the theatres the privilege of exhibiting advertising films on the theatre screens.

And then, we contact the advertisers and obtain contracts with these advertisers for the purpose of rendering a service of exhibiting the films on the theatre screens with whom we have contracts or other agree-

ments permitting us to do that.

We do other production to render the service distinctive to e advertiser.

Q. In what territory does the Commerce Picture

Sales, Inc., operate?

A. Our production takes place in and close to the

city of New Orleans.

Our theatre contracts and distribution, that sales efforts take place in Louisiana, Mississippi, Oklahoma, Arkansas, Alabama and Florida, either directly through our own salesmen or indirectly through a distributor.

Q. Now, when you say indirectly through a distribu-

tor, do you have more than one distributor?

A. We have only one distributor at the present time.

#### 12791

#### CROSS-EXAMINATION

Q. (By Mr. ROSEN:) Mr. Weigand, how old are you?

A. I am forty-eight.

Q. Did I understand that you have been engaged in the Motion Picture Advertising Business since 1934, did you say?

A. Shortly thereafter, either '34 or '35, I believe.

Q. Your first contact with that business was as an employee of the Motion Picture Advertising Service as Sales Manager?

A: That's right.

Q. In the capacity of City Sales Manager?

A. Yes, sir.

Q. For the City of New Orleans?

A. Yes, sir.

Q. You stated you were with that company, did you say, until 1939?

A. That's my recollection.

Q. And then went into business in the same line of business?

A. Yes.

Q. When you first left that company, what was the nature of the business that you established; the same as you are now operating?

A. Very largely the same, although we did not at

that time have a library of films. We made special films and we made no attempt to maintain a library of films.

[280] We also did other motion picture production work separate from the advertising field.

Q. Just for the sake of the record, would you mind

explaining what is a library film.

A. Well, a library film, from my understanding, is a film that can be used by several advertisers when it has been added to by a commercial ending, identifying it with a particular advertiser.

Q. Am I to understand that that is a film which would be useful in a certain line of business like a drug business or maybe a dry goods business or some similar business and by adding the name of the advertiser where you advertise the subject matter. It is general and can be used for more than one advertising?

A. That's right.

Q. So, when you started out then in your own business, you did not manufacture library film but did engaged in the business of securing advertising contracts from advertisers?

A. Yes.

Q. Screen privileges from such theatres as your company secures?

A. Yes.

Q. And manufacturing films and servicing those contracts?

A. Yes.

- Q. Screen privileges from such theatres as 281] your company secures?
- Q. And manufacturing films and servicing those contracts?

A. Yes.

Q. With the exception of the beginning, library films that you didn't manufacture?

A. That's right.

Q. In order to secure screen privileges for the purpose of servicing your advertising contracts, you under-

took to go to the owners of the theatres or theatre chains and tried to secure contracts for screen privileges, did you not?

A. That's right.

Q. I venture the assertion that in some contacts that you made with the theatres, you found that they were already under contract with some of your competitors, is that right?

A. Yes.

Mr. COLLINS: I object to that.

Trial Examiner KOLB: I don't believe that is within the scope of the direct. I will sustain the objection; strike the answer.

Off the record.

(Discussion off the record)

Trial Examiner KOLB: On the record.

Q. (By (Mr. ROSEN:) You were afforded, were you not, Mr. Weigand, ample opportunity

to make any bid that you wanted for those theatres, and offer the theatres the films that you produced; submitted to them any literature or argument to enable you to secure those film rights, were you not?

Mr. Collins: I am going to object to that. I submit

that is more than double barrels fired at once.

Trial Examiner Kolb: Did you understand the question, Mr. Witness?

The WITNESS: I understand the question, but it would be hard for me to answer.

Q. (By Mr. Rosen:) I will restate my question, Mr.

Weigand.

Has/it been your experience in securing the screens in the theatres, there is free competition among you and you competitors in order to get the screen—

Mr. Collins: I object to that.

Trial Examiner KOLB: The objection will be sustained

Q. (By Mr. ROSEN:) You have stated in your direct examination that you made an attempt to secure screen privileges from the United Theatres, Corporation, is that correct?

A. Yes.

Q. And that you were not able to secure those contracts?

e:

A. That's right.

Q. That you also attempted to secure contracts from the Southern Amusement Company. What was the result of those negotiations?

A. They were unsuccessful.

Q. You never contacted the Malco Theatres, I understood you to say?

A. What was the beginning of that question?

Q. What was the beginning of that question; I said you never undertook to contact the Malco Theatres to secure screen picture production?

A. We did not.

Q. I understood you to say that with regard to Jefferson Amusement Company you had shown a few films on a test basis and never gotten a contract from them?

A. That's right.

Q. Isn't it a fact that subsequent to the test that you made, the Motion Picture Advertising Service Company went in and secured a contract for screen privileges?

A. Yes, by paying some foreign corporation more

than the sum we would be prepared to pay.

Q. They paid the theatres more money than you ever had to pay; that is why they got the contract?

A. That's right.

Q. Did I understand you to say that with regard to Delta Theatres, you had no contracts with that particular chain?

A: I didn't handle that correspondence.

Q. You didn't handle that correspondence?
A. That's right

Q. Who has the screen privileges for screen advertising at the Fox Theatre in Pollack, Louisiana, at this time?

A. I believe the Exhibitors Advertising Company are

the Louisiana distributors who has those privileges.

The Exhibitors Advertising Company has several contracts with Fox Theatres. I couldn't definitely tell your which one of the Fox Theatres those are that are located in Louisiana, such as were handled and owned by a corporation owned by Billy Fox Johnson; I don't know the exact towns.

Q. Those contracts that are now held by your dis-

tributor are exclusive, are they not?

A. Yes.

Q. Prior to your distributor obtaining those contracts, the Motion Picture Advertising Service Company had a contract for screen privileges, did it not?

A. I couldn't answer that.

Q. Don't you know that to be so?

A. No, I don't know it personally to be so.

Q. You heard that. You were-

Mr. COLLINS: I object to that.

Trial Examiner KOLB: Off the record.

(Discussion off the record.)

Trial Examiner KOLB: On the record.

[285] Q. (By Mr. ROSEN:) Who did have the screen rights to those, prior to that?

A. I don't know.

Q. Were they held by one of your competitors or were they not?

Mr. Collins: I object.

al Examiner Kolb: Objection sustained:

The Witness said he didn't know.

Q. (By Mr. ROSEN:) Mr. Weigand, you have no hesitation, do you, in going to theatres or theatre chains where they have contracts with your competitors and negotiating with them to secure screen privileges at the expiration of those contracts, do you?

Mr. COLLINS: I object.

Trial Examiner Kolb: Objection sustained.

Q. (By Mr. ROSEN:) Is your company and your distributor in open competition with the Motion Picture Advertising Service Company in securing screen privileges from theatres in the territory that you testified of?

Mr. COLLINS: I object to that.

Trial Examiner Kolb: What do you mean open competition. Strike the word open.

Mr. Rosen: I mean competition.

Mr. Collins: It is my understanding that the fact

should go in and that it is up to the Commission to determine whether or not that constitutes competition.

Trial Examiner KOLB: I overrule the objection.

The WITNESS: In answer, there are two ways of ob-

taining contracts.

One is a non-exclusive contract and another is an exclusive contract. In the case of an attempt for an exclusive contract, there is competition.

Q. (By Mr. Rosen:) I take it from your answer that your company and your distributor attempt to secure exclusive contracts from those theatres who are willing

to make contracts with you,

A. Our policy is to make nonexclusive contracts wherever possible, and it has been, from the beginning of our business, we have been forced in several defenses to make some—that is, our distributors have been forced in several defenses to make some exclusive contracts in order to be able to have some theatres in which to exhibit films.

Q. You say your policy originally was to make non-exclusive contracts with the theatres?

A. Yes, sir.

Q. Now, you try to have exclusive contracts because

you are forced to do that by your competitors?

A. Not only now. In fact, our present distributor, Exhibitors Advertising Company has found it necessary to make exclusive contracts in order to be able to obtain enough business to stay in business.

[287] Q. Isn't it a fact, within your knowledge and experience, that theatres limit the amount of screen advertising that can be shown on the screen in

any given performance?

A. There is usually a limitation, not only on the part of the theatre but on our own side of the question. We don't wish ourselves to exhibit more than a given number for the reason that it is obnoxious to the audience and represents a lesser value to the advertiser.

Q. On the average, what would you say that limita-

tion was?

A. Vell, in practically all contracts, the limitation

is six or eight advertising units in any given thatre

performance.

Q. Well, when you adopted the previous policy that you spoke of, of obtaining nonexclusive theatre contracts, I take it that there were contracts the theatres made in those cases with your competitors, so that there was more than one screen advertising company screening films at the same time on that theatre screen, is that right?

A. In many instances, that was true.

Q. In those cases, in order to do business, each one of the distributors, like yourself, would go and sell advertising and manufacture film and then try to show it on the theatre screen, is that right?

A. Yes.

Q. Since the theatres limited the number of advertisements that could be shown in any given performance and you gentlemen engaged in the advertising realize that that was a proper limitation, how would you know when you went out to sell an ad that it would be exhibited at a given performance when you didn't know how many competitors sold to the same performance?

Mr. Collins: I object to that. Mr. Examiner, I venture to say that counsel didn't tell us what the question involved.

Trial Examiner KOLB: The objection will be sustained.

Q. (By Mr. ROSEN:) Mr. Weigand, in those cases in which your company had nonexclusive agreements, how were you able to know how many ads to sell for performances for that theatre?

A. Our representative had to contact the theatre to find out how many spaces were open before he could sell.

Q. And that was necessary each time that you were selling advertising, because what was true one minute

might change the next, isn't that true?

A. It wasn't quite as drastic as that. We developed the experience where large use of the space in the theatre was taking place and we also had experience where little use of the advertising space in the theatre was taking place and only in instances where there was

serious competition for advertisers accounts on a given theatre screen, was it necessary for us to check [289] with the theatre manager in order to find out whether he would accept additional advertising on his screen.

Q. So that in case the theatre screen was not filled with the maximum amount of advertising it was willing to display, you found that you could go along selling advertising and getting the advertisements exhibited when you manufactured the film and sent it into the theatre?

A. After we had the contract, even nonexclusive of

the theatre.

Q. I venture the assertion, in the more busy areas, you found on occasion that the theatre's screen was filled with competitors ads and then your orders could not be shown at that performance?

That only happens in very occasional instances. I wouldn't be able to state any specific one at the

moment.

Q. If the theatre was willing to exhibit six to eight ads and you had a nonexclusive arrangement, how many ads would you or your company sell per performance?

Our experience was we couldn't sell more than two or three per performance on any given trip of a representative in that area.

Q. And that left room for four or five for your combetitors who had similar contracts as you?

A Right.

Well, now, with regard to the present day arrangement where you have exclusive contracts with theatres, how many advertisements are those

theatres willing to show?

This present day arrangement, there is nothing modern about exclusive or nonexclusive contracts. Some theatres have exclusive and some nonexclusive.

Those nonexclusive are the ones that no one has ever

offered enough money to make them exclusive.

Q. Well, you mean since you have been in the business, you found that some theatres were contracted on an exclusive arrangement and others on a nonexclusive arrangement?

A. Yes.

Q. That depends to a great extent whether the theatre owners themselves wanted to do business on one basis or another?

Mr. COLLINS: I object,

Trial Examiner KOLB: Objection sustained.

Q. (By Mr. ROSEN:) You said that the question of whether or not the contract with the theatre was exclusive or nonexclusive depends upon how much money was paid in the theatre?

A. I don't believe I said that.

Trial Examiner KOLB: Off the record.

(Discussion off the record.)

Trial Examiner KOLB: On the record.

Q. (By Mr. ROSEN:) Has the Motion Picture Advertising Service Company ever refused to exhibit films for advertisers with whom you have contracts on screens that are available to the Motion Picture Advertising Service Company?

A. Did you say ever?

Q. Yes.

A. That would involve my giving a specific instance of a refusal. I wouldn't be able to give a specific instance of a refusal.

Q. What is their general policy with regard to accepting advertising from your company to be exhibited on screens under the contract?

A. What was their policy?

Q. As manifested in their dealing with you, Mr. Weigand.

Mr. Collins: Mr. Examiner, I think I will object. I

think that is going out of the field of the direct.

Trial Examiner Kolb: The objection will be sustained.

Q. (By Mr. ROSEN:) Mr. Weigand, have you ever requested the Motion Picture Advertising Service Company to exhibit film advertising of your customers on screens under the contract to them?

.A. Yes.

Q. Have they generally accepted the business?

A. Yes.

Q. Have they ever refused to accept the business?

Mr. Collins: Mr. Examiner, I submit that particular question was asked a minute ago and the witness answered that specific question.

Trial Examiner KOLB: The objection will be

overruled.

Q. (By Mr. Rosen:) You may answer it.

A. I said that I would have to indicate a specific instance when we were refused. I couldn't think of a specific instance in which we were refused.

[295] RENE P. KARRIGAN was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION

Q. (By Mr. Collins:) Give your full name and address.

A. Rene P. Karrigan, 525 Poydras Street, New Or-

leans, Louisiana.

Q. Mr. Karrigan, in what business are you engaged?
A. In the business of production and distribution of motion pictures.

Q. Under what name are you operating? A. Commerce Picture Sales Corporation.

Q. And how long have you been engaged in that

business?

A. Commerce Picture Sales Corporation has engaged

in this business since 1941.

Q. And how long have you been engaged in it personally?

A. Since 1932.

Q. And were you working for yourself or were you employed by someone prior to 1941?

A. Prior to 1941, I was employed by the [296] Motion Picture Advertising Service Corporation of New Orleans.

Q. And how long did you work for Motion Picture Advertising Service Corporation?

A. 1932 to 1941.

Q. And then you-

A. Formed the Commerce Picture Sales Corporation.

Q. And you have been operating that business ever since?

A. Ever since.

Q. Now, is that a corporation?

A. Yes, sir.

Q. That's the one in which Mr. Weigand is connected, isn't it?

A. Yes, sir.

Q. Mr. Weigand is the man who testified on yester-day in this case?

A. That's right.

#### [307]

# CROSS-EXAMINATION

Q. (By Mr. ROSEN:) Mr. Karrigan, you stated that when you first engaged in this business as an employee of Motion Dicture Advertising Service Company in 1932, you worked for them until 1941 and then you went into business for yourself, is that right?

A. Right.

Q. When you first went into this line of endeavor as an employee of M. P. A., did theatres at that time give exclusive contracts to the distributors?

A. Yes.

Q. Some gave exclusive contracts and some gave non-exclusive contracts?

A. Correct.

Q. To several distributors?

To restate my question for the record, some:
[308] theatres gave exclusive contracts to one distributor and other theatres gave nonexclusive contracts to several distributors?

A. That's correct.

[313] Q. When you first contacted the Jefferson Amusement Company, were they running any screen advertising on their screens?

A. I don't believe so.

Q. You made a test run in one theatre, free of charge, in order to try and negotiate a contract with them for screen advertising rights?

A. Right.

Q. After that test run, Motion Picture Advertising Service Company made a proposition to them, as a result of which Jefferson Amusement Company entered into a contract with Motion Picture Advertising Service Company, isn't that correct?

A. That's right.

[314] Q. With regard to the Roxy Theatre, referred to in Commission's Exhibit 20—I think you have seen that?

A. Yes, sir.

Is it not a fact that the Roxy Theatre in Lafayette, Louisiana, at about the time of this letter was purchased by the Southern Amusement Company and became one of the theatres in that chain?

A. That's correct.

Q. Is it not a fact that prior to the date of this letter, January 21, 1944, the Southern Amusement Company had a contract with Motion Picture Advertising Service Company covering all of its theatres?

A. I don't know that to be a fact but I assume that

is the case.

- Q. Well, being in the industry, didn't you know that that was the situation?
- A. Well, I know that they were running—
  [315] that the Motion Picture Advertising Service
  Company was running service on their screen
  but what kind of contract was in existence, I don't know

Q. That was running on Southern Amusement

Screens?

A. That's right.

Q. And when the Roxy Theatre became a part of that chain, then, they wrote you this letter?

A. That's right.

Q. Mr. Karrigan, what arrangement did you have with the Madison Theatre in Memphis prior to the writing of this letter of December 13, 1943?

A. I had a nonexclusive arrangement to run ads at

a rate per week for each ad run.

Q. Have you ever, since the receipt of this letter, made any attempt to secure a contract with the owner of this theatre?

A. No, sir, because I discontinued my representative there and had no occasion to solicit the theatre.

Q. You don't do business in that territory?

A. Not at the present time.

Q. You have testified in answer to Mr. Collins' question that under the present arrangement between your company and M. P. A., you make less profit by taking agency commissions than if you screened films directly on the theatre screens under arrangements directly made

with the theatre Did I understand you right?

[316] A. That's correct.

Q. But under such arrangements there are no obligations on the part of your company to pay any amount of money to the theatre, is there?

A. That's correct.

Q. Some of these theatre screen agreements made with some theatres require a minimum guarantee from the distributor, do they not?

A. I think that is, in some cases, used as a means

of making a deal with the theatre or theatre chain.

Q. In the competition among the distributors for theatre screen agreements, minimum guarantees are resorted to on occasions in order to induce the theatre to make an exclusive contract, is that right.

A. That's correct.

Q. In such cases the distributor who has the exclusive privilege must pay the guarantee whether the films are screened or not?

A. That's correct.

Mr. Collins: I want to object to this.
Trial Examiner Kolb: The objection is sus-

Q. (By Mr. ROSEN:) The arrangement that your company handles with M. P. A., they allow you the agency commission, I understand you to say. What amount is that?

A. Fifteen per cent.

Q. Is that the standard or usual rate allowed throughout the country to advertising agencies?

That is the same rate that you allow them when they book through you?

That's right.

Q. Has there been any change that has taken place from 1932 to the present time with regard to securing of theatre screen agreements, with regard particularly to the question of exclusive clauses in the contract?

A. Well, that I don't know. I could only guide myself in accordance with the way we make contracts with the theatres that we do business with. But what our competitors do is beyond our knowledge; whether there has been any change in the way the contracts are made we wouldn't be able to state.

Q. Well, let me ask you first when you first worked for M. P. A., that company and competitors of that company obtained exclusive contracts from theatres sometimes and nonexclusive sometimes, in 1932, didn't they?

That's right.

Q. And that condition has not changed from 1932 to the present time, is that right?

You mean the condition of making contracts?

Q. In some cases, theatres make exclusive and others nonexclusive.

That condition still exists.

When you go in yourself to negotiate a theatre screen agreement, do you attempt to make it on an exclusive basis?

A. No. sir.

Q. Do you have any exclusive contracts?

A. Not in the name of Commerce Picture Sales Corporation.

In the names of your distributors? Q.

They have.

Q. They had A. That's right. They have exclusive?

Q. Don't you direct them-their policies in connection with that?

A. No, sir, they handle their own theatre connections.

Q. So that while your distributors at the present time do have some exclusive contracts, your practice in getting screen privileges for your own company is to take nonexclusive contracts?

A. That's right.

Q. Do you have any exclusive contracts?

A. No, sir, not in the name of Commerce [319] Picture Sales Corporation.

- Q. Well, I was not trying to draw any fine distinction between your company and your distributors. What is the significance to the last answer, not in the name of-
- A. Well, the question of exclusive contracts during the course of this hearing has been a long the lines of how many exclusive contracts do we hold, and our answer has been none; that they are held by our distributors and I want to keep that point clear.
- Q. You testified with regard to the Billy Fox Theatres. I understand one is the Fox Theatre in Bunkie and one was the theatre in Marksville.

A. Yes, sir.

Who has the screen agreements with those theatres at the present time?

The Exhibitors Advertising Company.

A. The Exhibitors A. Q. That is your distributor?

A. That's right.

Q. Is that contract exclusive or nonexclusive?

A. At the present time it seems to be a very nonexclusive contract because we have just recently checked and found competition.

Q. What does the contract read? A. The contract reads exclusive.

- When your distributor got the contract, isn't it a fact that the owners had already entered into a contract with, Motion Picture Advertising Sales; they breached the contract and then turned it over to your distributor?
- A. That I wouldn't know, I did not make the contract myself.

You didn't.

A. No.

Q. Do you know whether that contract for the Fox Theatre was obtained in competition with the Motion Picture Advertising Service Company?

A. That I don't know because I didn't handle the contract.

Q. You stated that is part of your duties. You obtained theatre screen agreements with theatres in territories not covered by distributors for your company?

A. That's correct.

Q. Did you do that in competition with the Motion

Picture Advertising Service Company?

A. When we make a contract we don't know who we are in competition with. We are merely working on our own and we are not worried about competitors.

Q. Who are your competitors for screen rights in

this territory?

A. Well, the Motion Picture Advertising Com-[324] pany, the Alexander Film Company and every now and then someone from out of town that might come in from some other area with special deals.

[326] Q. So there is no uniform rate that the competitors agree to pay per ad. Each distributor makes his own rate and offers that to the theatre?

A. Correct.

Q. And in some cases the theatre accepts all the business and in some cases the theatre picks out one of the distributors and gives him the business alone?

A. Well-

Q. Don't you know the answer? Mr. COLLINS: Let him answer it.

Trial Examiner KOLB: Answer the question.

The WITNESS: The one case that I know of, of the exclusive case, is where he picks out one distributor.

Q. (By Mr. ROSEN:) That is what I have in my mind in the latter case where he picks one out and gives him an exclusive contract.

A. Well, he doesn't exactly pick him, perhaps the distributor who makes the exclusive contract may have a better deal. It may not be in money, it may be in better service.

Q. So, in other words, he likes the character of film shown and that may be one of the contributing factors to move the theatre?

A. That's right, as a matter of fact, our contracts are made on that as a basis. They like the character of our service a lot better.

[328] Q. Mr. Karrigan, I show you a letter. Mr. Karrigan, does the Exhibitors Advertising Service have theatre screen agreements with the Don Theatre of Alexandria?

A. Yes, sir.

Q. The Davis of Bossier City?

A. Yes, sir.

Q. And the Lake Theatre of Shreveport, Louisiana?

A. Yes, sir.

Q. Are those contracts exclusive contracts or non-exclusive?

A. Exclusive, with the Exhibitors Advertising Company.

Q. That is your distributor?

A. That's right.

[330] Q. At the present time, you have, as you testified, an arrangement with M. P. A. under which you book some films in theatres on screen agreements with them and they book some with theatres on screen agreements with you or your distributors?

A. That's right.

[331] Q. Isn't it true in your experience in booking the films through M. P. A., that they have generally accepted the business in screening and advertising?

A. They have accepted the majority of the business that we have offered.

[332] REDIRECT EXAMINATION

Q. (By Mr. Collins:) Mr. Karrigan, counsel asked you if you were not able to have your ads screened in more theatres by having access to the theatres controlled by M. P. A.

Does the existence of exclusive contracts between M. P. A. and the different theatres give you and your

distributors a wider distribution of your advertising films?

A. To a certain extent.

Q. It does?

A. To a certain extent.

[340] NOBLE C. CAMPBELL was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

## DIRECT EXAMINATION

Q. (By Mr. Collins:) Mr. Campbell, would you state.

for us the nature of your business?

A. I am distributor of Parrot Films, Des Moines, Iowa. I sell advertising, screen advertising to the business firms, collect for it, order it made and shipped direct to the customer.

Q. Do you or do you not make any arrangements

with the theatres for displaying?

A. In each case I make a written contract to run a certain length of time, whatever time that may be.

Q. Do you make that arrangement before or after

you have contacted the advertiser?

A. I make that before. The first thing I do when I start working a town I call on the theatre and make a contract. Otherwise I don't work the town.

•[341] Q. Then after you have sold the advertising to the advertiser, from where do you obtain your

A. I send the orders into Parrot Films, Des Moines, Iowa and they ship direct to the customer.

Q. Now, what territory do you cover, Mr. Campbell?

A. Well, of recent years it is Virginia, West Virginia, North Carolina, South Carolina, Kentucky and three spots in Indiana.

Q. How long have you been engaged in this business?

A. Well, I have been in this business approximately 18 to 29 years. I have been with Parrot Films 12 to 15 years.

Q. Mr. Campbell, did you ever transact any business

with any theatres in Charlotte, North Carolina?

A. At where?

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Q. Charlotte, North Carolina.

A. Not in Charlotte, North Carolina, no, sir. I have contacted the home offices of two chains in Charlotte, North Carolina.

Q. What were the names of those two-chains?

A. The Kinsey Amusement Company. That is not exactly the right name. I'll have to look it up again, and the Everett Amusement Company. That was the Wilkie Kensey Amusement Company.

Q. Where are their theatres located?

[342] - A. They are scattered all over North and South Carolina and Georgia.

Q. Did you say that you did or did not do business with the Wilkie Kinsey Amusement Company?

A. I did not. I failed to make a contract.

Q. When did you contact them?

A. In recent years I would say I contacted them three or four times over a period of six or eight years.

Q. And were you advised of the reason that you could not do business with them?

A. Yes, you mean the Kinsey people?

Q. Yes.

A. They had an exclusive contract with Alexander.

Q. Anyone else?

Mr. Rosen: I object to that on the grounds it is leading and suggestive. The witness has answered the question.

Trial Examiner Kolb: The witness may answer the question. Was anyone else mentioned besides the Alexander Film Company in your discussions with the Kinsey chain.

The WITNESS: No, sir.

Q. (By Mr. Collins:) Did you ever do any business

with any theatres in Nashville, Tennessee?

A. No, sir, I never have. I have tried to contact them. I never did meet him. The Tennessee and Western Kentucky area is pretty much tied up and [343] some parts of Georgia is pretty much tied up with the Sudecum Chain in Nashville and I have never called on their home office, but their managers have told me that they had exclusive contracts

with either Alexander or M. P. A.

Q. Now, do you know how many of the theatres you contacted in that chain?

Not too many. I made a circuit in Western Ken-

tucky.

Q. You did what?

I made a circuit in Western Kentucky two or three years ago and didn't make a single contract because they were all Sudecum Theaters, you know.

Q. Sudecum Theaters?
A. That is right, and they couldn't do any business.

Mr. COLLINS: I think that is all.

## CROSS-EXAMINATION

(By Mr. Rosen: Mr. Campbell, when you stated in direct examination the states and places where you did your business. I understood you to say Kentucky Virginia, West Virginia, North Carolina, South Carolina, and three towns in Indiana.

That is correct.

Q. Did I get that correct?

A. You understand, I can go anywhere east. I can go in any state east."

Q. But that is where you have been trying

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[344] to do business?

A. Yes, that is where my business is. It has developed down to that point. In traveling all over the country I established finally my personal business in the territories that I mentioned there.

Q. The headquarters of the Sudecum Theaters, you

said, was in Nashville, Tennessee?

That is right.

Q. And your testimony with regard to that chain given a moment ago was based on what you say the manager of one of their theatres gave you?

A. No. several of them.

Q. Had you ever been to see one of the heads of that Sudecum Chain?

A: No.

Q. You made no attempt to secure the screen privileges for that circuit?

A. Yes, I did.

Q. Whom did you see?

A. Various managers in the towns.

Q. The individual theater operated by that manager?

A. No, some Sudecum Chain operates and their associates operate perhaps 200 theaters or maybe 300 theaters. In fact, in Tennessee, see, they have so far as I know every good town tied up by Sudecum Theaters.

Q. In Tennessee?

[345] A. In Tennessee and Western Kentucky and a few towns in North Carolina, not many, and a few towns in Virginia. I have in mind the town right, near Bristol where the Eastman Films are made where they have a big plant there. No, I am wrong. That is wrong. That is another outfit.

Q. I didn't mean to interrupt you. I want to have

you complete your answer.

A. I am finished.

Q. I understand that you say you did speak to several of the managers of the theatres of the Sudecum circuit?

A. That is right.

Q. How many managers did you speak to?

A. Oh, I would say— Q. Just approximately?

A. Well, I'd say easy 10 or 12. Q. Located in different towns?

A. Different towns.

Q. You mean you spoke to these managers with respect to getting a screen privilege for that particular theater operated by that particular manager?

A. That is right.

Q. But no attempt was made by you to cover the whole chain of the Sudecum circuit by a screening agreement covering all of their theaters?

A. No.

[346] Q. Because you were not prepared with your limited organization to sell advertising in all of these towns, were you?

A. Yes. Q. Sir?

A. Yes, I was prepared to sell them.

Q. In Tennessee?

A. Yes.

Q. What organization, if any, did you have to sell advertising in Tennessee?

A. I didn't have any organization but I have the rights to go into Tennessee and operate the same as I

do in North Carolina, or Tennessee, or Virginia.

Q. You mean that your agreement with the Parrot Film Company permits you to go in there if you want to?

A. My agreement with Parrot Film Company permits me to go everywhere east of the Mississippi River

with the exception of Ohio and Michigan.

Q. My question was this, that once you have secured the right from the theater of screening films, then you sale the next step was you would go in and sell the advertising?

A. That is right.

Q.— Well, had they given you all the theaters in Tennessee, it would have then become necessary for you to go into those towns and sell advertising in Tennessee, wouldn't it?

[347] A. That is right.

Q. Did you have any organization prepared,

to handle that work?

A. I didn't have any but if I could have booked Tennessee I could have easily.

Q. Built up one?

A. Yes.

Q. You would have then organized some sales force to go into those towns?

A. That is right.

Q. But at the time you tried to get the theaters you had not done business in Tennessee, had you?

A. Only with one or two exceptions.

Que Well, in the cases of the ten—you said approximately ten theater managers of the Sudecum circuit—did you make any firm offer as to what you were willing to pay for the screen privileges?

A. I didn't get that far.

Q. You didn't get that far?

A. In a few instances I may have but in general I didn't.

- Q. In the few instances you did make offers, what were they?4
  - A. I don't know.

Q. You remember?

A. / No, I don't.

Q. Give us one case of what you offered?

A. I don't know.

Q. Well, was it your habit in those cases to offer so much for advertisement that they would screen or to offer them so much for a guarantee for the theater for a year?

No. I offered them so much for the individual ad.

Q. So that your general way of securing screen privileges from a theater was to offer so much per ad that they would display on their screen?

That is right.

That price would vary according to the size of the theater in the town?

A. That is right.

And how many ads were you permitted generally. to display where the theater did make an agreement with you? . What was customary?

A. Usually the limit is ten.

- Q. In the most cases isn't it much under that?
- · A. No, on the 12 months it will everage around 7.

Q. Per performance?
A. What?

Q. Seven ads per performance?

A. That is right. It will average around 7 ads for the year on my business. That is not the general average of all salesman.

Q. In the case when you made an offer of so much per ad to these various managers, was there any guarantee as to the number of ads you would put on the screen?

A. Except in many cases they have a minimum:

Q. What is the minimum?

A. A minimum of maybe, say, \$20.00. For instance, sometimes if I would only sell one or two or maybe I'd have to sell they would require me to pay \$20.00. In other words, they would play safe. On the other hand, they would charge in most cases per ad and without a minimum, but in some instances they require a minimum.

Q. But in most of the cases where you made contracts, you offered so much per ad per performance?

A. That is right.

Q. And then if you sold, displayed, one ad, they would get the price that you agreed to pay for that advertisement and if you sold four they got four times that unit price and that depended upon the number of ads you were able to sell?

. That is right.

Q. I understood you to state that your method of doing business was to first contact the theater and get the right from the theater to exhibit the film and thereafter, if you got it, to go out and sell the ad?

A. That is right.

Q. Now, I want to ask you something about that because I am ignorant on this subject.

A. O. K.

[350] Q. When you would go into any theater and then get the right to exhibit and film that, how one would that right exist, for one day, one week, or one year?

A. That would be up to the theater.

Q. Generally, give me a general case?

A. Generally four weeks is my system.

Q. Four weeks?

A. Yes.

Q. So that you would go into the theater and get a right from them to exhibit some films for four weeks?

A. That is right. Then I would call on that theater three or four times a year. In other words, in place of running continuous I would run a month and off two or three months.

Q. Well, suppose when you went into the theater to obtain that right, suppose the theater agreed to what you wanted. You at that stage had no advertisement sold at all, had you?

A. That is right.

Q. Therefore, if the theater was willing to exhibit, as you say, ten ads in some cases?

A. That is right.

Q You had not sold any previously?

A. That is right.

Q. Then the number that they would put on the screen would depend upon your ability later to sell the ads?

[351] A. That is right.

Q. And if you sold ten they put ten on?

A. That is right.

Q. And if you sold two they put two on?

A. That is right.

Q. And if you sold none they put none on?

A. That is right.

Q. Therefore, unless you had made some guarantee of a minimum to the theaters, they would never know after making the contract with you what consideration they would get from you for that contract, would they?

A. Until I told them the total.

Q. You are talking about the total?

A. Until I told them the total.

Q. Until later on you ship the films in?

A. Except the ones who required a minimum.

Q. And in those cases there was a minimum but in most cases you did not guarantee?

A. In most cases they don't ask for a minimum.

Q. So the majority of your cases there was no guarantee whatever. It was only the exceptional case?

A. If you will allow me to say this, I don't know whether I should or not, but I have been on the job so long and I am so thoroughly established in my particular personal business that they know me and naturally they

know that I will sell up to ten. Sometimes I [352] don't get but eight; sometimes—once in awhile—

I might not get but two or three, and in some instances maybe I won't get any. That has happened, of course.

Q. That has happened sometimes?

A. Outside of that fact, I don't know whether that would enter into it or not.

Q. Well; now, in the case where you would get this right, you say that is for four weeks generally?

That is right.

With regard to those theaters that you have in mind, would they at the same time have contracts with other distributors similar to yourself to exhibit ads for them if they sold them?

A. You say, would they?

Yes, if they wanted to as far as I am concerned.

I mean go back in your mind in those cases in which you did get those contracts, were you the only one they dealt with or did they have contracts with several distributors?

A. Are you talking about the Sudecum?

I am speaking about the ones you succeeded in getting, the 40 or 50 theaters right now that you service.

A. In most cases they have contracts with other services, mostly Alexander. The others don't enter into it

enough to waste the time to take up.

Q. Most of your competition, you say, comes from Alexander?

That is right. It is the only concern in the United States that has a complete sales organization of

this kind.

Well, in the cases right now that you have under contract in which they also have existing contracts with Alexander, suppose Alexander sales force goes in and . sells advertising and fills up the screen, what happens to the ads when you send yours in?

A. The ads are run.

Q. Sir?

A. The ads are run according to contract.

If they limit the screen to ten and they have got contracts with you?.

A. I beg your pardon.

Q. Let's go back a little bit.

A. They limit me to ten in most cases.

You don't mean by that that they will in any one performance exhibit more than ten advertisements, do vou?

I mean that they exhibit the contracts, the advertising that I sell and if there is a limit of ten, which usually there is, why, I stop at ten. I don't sell over

ten. I have in a few instances sold more.

Q. What I was asking you was this. You are familiar with the operations of the theaters that you service, aren't you?

A. That is right.

[354] Q. What is the greatest number of advertisements they will exhibit in any one performance?

A. I don't know.

Q. Have you ever seen them run over ten? Isn't it generally less than ten?

A. Are you talking about my service or all services?

Q. All advertisements on the screen in any one performance.

A. Lots of them run more than ten. I sold nine this week in Paintsville, Kentucky and M. P. A. and Alexander, I think, have about six on the screen continuously.

Q. You go to the theaters often and see the pictures? What is the customary number of advertisements that are exhibited on the screen, those that permit advertising?

A. I don't think there is any customary number. I think that depends on the theater manager.

Q. What is the most you ever saw in your whole life at one time?

A. I wouldn't answer that question. I think I have seen as many as sixteen.

Q. That is the most you ever saw?

A. I think so.

Q. What I am asking you is this. In case you have a contract that permits you to sell ten and at the same time the theater has a contract with Alexander, you say?

As That is right.

[355] Q. Suppose by the time you get around to selling the ads Alexander has sold ads and filled up the screen. What happens to the ten that you have sold?

A. They are run.

Mr. Collins: I am going to object to that.

Trial Examiner KOLB: The witness has answered this about three times.

Mr. ROSEN: I must say then I don't understand his answer.

The WITNESS: There is no reason for misunderstanding on that. When I go into a town I make a contract that is good.

Q. (By Mr. ROSEN:) What do you mean by "good"?

A. I mean it is binding and the theater is responsible

and they run it according to contract.

Q. That is just what I meant. When you make a contract with a theater for four weeks for up to ten ads, you have a binding commitment on the theater that if you sell those ten ads or up to ten they will exhibit them for you?

A. Yes.

Q. And they carry out the contract?

A. Yes.

Q. Irrespective of what deals they have with other people?

A. Yes.

[356] Q. Then, according to your testimony, Mr. Campbell, you make these arrangements for four week intervals?

A. That is right.

Q. And then when you get through with that four week interval you have to go back to that theater to get another commitment for the next four weeks?

A. That is right.

Q. So that with regard to those theaters that do business with you, you have to repeat your contract 13 times a year?

A. No. °

Q. I mean 12 times a year?

A. No, about four times a year.

Q. Well, I say 4 weeks into 52 weeks is 13, isn't it?

A. No, I run a contract for four weeks starting on August 1, we'll say, that runs up four weeks during the month of August, which is practically the last day of August, and then I am out September, October and usually November.

Q. Why are you out those three months?

A. Because that is my way of doing busi ss. In

place of running continuously, my theory is that continuous advertising becomes monotonous to the public and we are on four weeks and we are out for three months. We give them a rest and then we come on with something entirely different.

Q. Let me ask you a question about that. Suppose you went into a theater that was willing to write any

kind of an arrangement you wanted. I understand that your policy is that you would run for one month and then be off for three months?

A: That is right,

Q. That is your way of doing business?

A. That is right.

Q. So that according to your method the theater would get consideration for the month it ran its ad with you and the next three months they wouldn't get any ads?

Mr. Collins: I submit that is argumentative and it is simple arithmetic.

Tral Examiner Kolb: The witness has answered.

A. That is right.

Mr. ROSEN: That is all.

[366] Mr. ROSEN: It is stipulated by counsel for the Federal Trade Commission and counsel for the respondent—that a copy of the testimony taken here in Colorado Springs in the three cases, Docket No. 5495, 5496 and 5497 shall be incorporated in the record of 5498. Is that all right, Mr. Collins?

Mr. Collins: Yes, it is agreeable to me.

(The testimony taken in Docket 5495, referred to in the above stipulation, is a follows:)

Mr. Hopgson: I will call Mr. Reid H. Ray.

REID H. RAY was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION

Q. (By Mr. Hodgson:) Your name?

A. Reid H. Ray.

Q. Your occupation.

A. President of Reid H. Ray Film Industries.

Q. Reid H. Ray Film Industries, Inc.?

A. Yes, sir.

Q. That is the same corporation as is named in these proceedings as Ray-Bell Films, Inc.?

A. It is.

Q. The corporation is the same corporation [367] but the name has been changed?

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[374] Q. Is your business competitive? A. Film advertising business?

Q. Yes.

A. It is very competitive.

Q. How did you grow from scratch in 1936 to 1450

theatres in 1947.

A. Well, it took a lot of hard work, a lot of sales effort, to contact theatres and obtain screening agreements from companies that had been in the business for many years, and our sales manager and his sales force, by a lot of sheer effort and hard work and consistent plugging, built one by one those theatre contracts

[375] up until they gave us a nucleus for film adver-

tising operations.

Q. You heard the testimony of Mr. McInaney that the acquisition of advertising contracts is also highly competitive. Would your answer to a similar question be the same as Mr. McInaney's?

A. Yes, it would. The obtaining of the advertiser's agreement and contract to run advertising films in local

theatres is a most competitive business.

of Mr. McInaney yesterday with respect to the reasons which induced the taking of exclusive theatre contracts?

A. Yes, I heard that testimony.

Q. Would your testimony be to the same effect?

A. I would give the same reasons, plus possibly one additional.

). What would the additional reason be?

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A. We believe that the exclusive contract with the theatre enables that theatre to handle its film advertising accounting and records in a far more simple manner by doing business with one company, which in many instances is a considerable amount of bookkeeping and accounting and keeping track of films that are shipped to the theatre and proof of screening to the film advertising company.

Q. Now as between a theatre under the so-called exclusive contract and one under the so-called non-exclusive contract, which one will have the most idle

screen space?

Mr. Collins: Mr. Examiner-

Q. (By Mr. Hodgson:) (Continuing) If you know.

Mr. Collins: I withdraw that.

Trial Examiner Kolb: Objection is withdrawn. Proceed.

A. The theatre with the non-exclusive contract will have more open space units available than the exclusive theatre.

[379] Q. (By Mr. Hodgson:) Now, do you have any exclusive contracts where the exclusive feature was put in expressly at the request of the theatre owner?

A. Yes, we have.

Q. Would you name some of them?

A. The Minnesota Amusement Company and the Home Theatres.

Q. Now, how many theatres are in the Minnesota Amusement Company circuit?

A. At the present time there are 64 theatres oper-

ating and running film advertising.

Q. And your contract with the Minnesota Amusement Company runs for how long?

A. One year.

Q. And explain just how the subject of the exclusive

feature came up in connection with that contract?

A. Well, in my negotiating with the Minnesota Amusement Company for the contract, it was specifically asked by the management of the Minnesota Amusement Company that we be their exclusive.

Mr. Collins: Mr. Examiner, I submit that any request of anyone is no defense in this proceeding, and it. is not material, and even solicitations by others for this respondent to enter into contracts containing the exclusive clause is no defense. I object to the testimony.

Mr. Hodgson: I submit it is perfectly proper,

[380] Your Honor.

Trial Examiner Kolb: Do you have anything

to say on that?

Mr. Hodgson: Yes. It strikes me that it is perfectly proper. Here is a theatre owner who has 64 theatres, and he comes to the Reid H. Ray Film Industries and

says, "We want an exclusive with you."

Trial Examiner Kolb: I believe it is proper to show the circumstances under which the exclusive contract in this particular instance was made. The extent to which it is a defense is not involved at the present time. It is a guestion of whether they have a right to the testimony at all or not.

Mr. COLLINS: Mr. Examiner, my contention is that it does not matter and it is no defense on my part if I have killed a man, to say that Tom Jones asked me to kill him or that Bill Smith asked me to kill him. same situation exists here. It is no defense to these parties because someone asked them to enter into the contract.

Trial Examiner Kolb: The objection will be over-

ruled.

Mr. Hodgson: You may answer. What is the question now, please?

Trial Examiner KOLB: Read the question.

The WITNESS: I think I had finished with the Minnesota Amusement Company answer. I can go on, I don't see any reason to.

Q. . (By Mr. Hopgson:). You also mentioned 381

· the Home Theatre?

Yes, I mentioned the Home of Brainerd, Min-A. nesota.

How many theatres in that chain? Q.

A. Ten.

Do you have an exclusive with that chain?

A. Yes, we have.

Q. It is exclusive, did you say?

A. It is exclusive.

Q. Why, was the exclusive feature put in that contract

A. The details of that transaction were not handled by me personally, but our Mr. Ringold handled that and I think he can give you the facts direct.

Q. Do you know of any other theatre owner or chain

owner that requested an exclusive?

A. Yes.

Mr. Collins: Mr. Examiner, I would like for the record to show—I don't want to keep interrupting—if the Trial Examiner's ruling is that all his testimony can go in, I would like the record to show that I object to all the testimony along that line.

Trial Examiner Kolb: Let the record show that the objection has been made to all testimony with reference to the reasons why an exclusive contract is entered into.

Is that your position?

Mr. Collins: Yes, and the testimony with reference to the solicitation by any party for this respondent to enter into any exclusive contracts.

Trial Examiner Kolb: Proceed.

A. Yes, the Volk Brothers' Theatres in Minneapolis.

Q. (By Mr. Hodgson:) How many theatres are in that string?

A. Four.

Q. Tell the details of that transaction.

A. Well, we had had an exclusive contract with those four theatres for about six years, and I had always negotiated that contract personally, and at the last renewal period. I was called into the theatre manager's office and they said that they were going to renew a theatre screen advertising agreement and that they were going to do business with one company and asked that we make our best proposition to them in competition with other companies that were bidding along with us.

Mr. Hodgson: You may inquire, Mr. Collins.

as a witness for the respondent and, having been first duly sworn, testified as follows:

## DIRECT EXAMINATION

Q. (By Mr. Hodgson:) What is your full name?

A. William H. Ringold.

Q. What is your occupation?

A. I am vice-president of the Reid H. Ray Film Industries, Inc.

Q. Is that the corporation which is designated in

these proceedings as Ray-Bell Films, Inc.?

A. Yes, sir.

Q. How long have you been with the respon-[390] dent, this corporate respondent?

A. Since May, 1938.

Q. What are your particular duties in connection with your employment?

A. I am in charge of the accounting and also assist

Mr. Ray in administrative duties.

Q. Are you familiar in all particulars with the film ad business?

A. Yes, sir.

Q. Did you hear Mr. Ray's testimony this morning in its entirety?

A. Yes, sir.

Q. Did you hear him refer to the Home Theatre circuit of Brainerd, Minnesota?

A. Yes, sir.

Q. Do you know about the contract between your company and the Home Theatre circuit which is now in force and effect?

A. Yes.

Q. That, I believe, is a contract carrying the exclusive clause with respect to local advertising?

A. Yes, sir.

Q. Did you have anything to do with negotiating that contract?

A. Yes.

Q. Before whom did you appear in connec-

A. Before the Board of Directors of the Home Theatre Company.

Q. What transpired then?

Mr. Collins: Mr. Examiner, I don't know whether the record shows now with reference to this particular witness that I object to that line of testimony.

Trial Examiner Kolb: The objection will be overruled.

·Q. · (By Mr. Hodgson:) Will you tell what happened

at the meeting of the Board of Directors?

A. Well, we were notified by our salesman who works the territory in Northern Minnesota where these theatres are located, that the theatres were complaining because the screens were overcrowded-

Mr. COLLINS: I want to object to that.

Trial Examiner Kolb: The objection will be sustained.

Q. (By Mr. Hodgson:) Just tell what happened before the Board of Directors at which you were present.

A. Well, they told us that they were not satisfied with the way the screen advertising was being handled, it was being handled by three different companies, and that the screens were overcrowded and that they would like to make arrangements with one company to handle the screen advertising in their theatres and that they

would like to limit the number of ads that could [392] be shown on the screens, and that they would

like to have us give them-make them an offer of the amount that we would pay them for the use of their screens for one year.

Q. Did you make them an offer?

A. Yes, sir.

Q. What was the result of your offer?

It was accepted.

Now, you state that one of the things they said 3. to you was that under a non-exclusive arrangement their screen was overcrowded?

A. Yes, sir. Q. You heard Mr. Ray's testimony in response to Mr. Collins, that the screens are more likely to be undercrowded than overcrowded in connection with non-exclusive theatre contracts?

Yes.

Q. What is your experience in connection with that situation?

A. Well, that's true in some cases, not in all cases.

Q. Just what do you mean by that?

A. Well, in some cases where there are non-exclusive situations, the screens are liable to become overcrowded because the film advertising salesman working the town does not know just how many ads there are on the screen, and therefore he goes and sells another ad and the screen becomes overcrowded and the theatre man becomes dissatisfied.

[393] Mr. Hodgson: That is all.

J. DON ALEXANDER was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

# DIRECT EXAMINATION.

- Q. (By Mr. Burgess:) Will you state your full name?
- A. J. Don Alexander.
  - Q. Where do you reside?

A. In Colorado Springs.

- Q. In what business are you engaged, Mr. Alexander?
  - A. Motion picture advertising.
- [394] Q. How long have you been engaged in the motion picture advertising business?

A. Thirty years on the first of next year.

- Q. With what film advertising company are you associated?
  - A. Alexander Film Company.
- Q. In what capacity are you connected with that

A. President and general manager.

Q. Mr. Alexander, will you just give us briefly the

history of the Alexander Film Company?

A. It started in Spokane, Washington, January 1st, 1919, in a very small way, experimentally, at a time when my brother, D. M. Alexander, and I, were engaged in the electrical supply and contracting business, and I was able to obtain a few short length advertising films and to produce some more locally. And I got contracts

with four theatres in Spokane to run them and started to sell the local merchants an advertising service.

Later on I hired a salesman and then gradually added additional salesmen who radiated from Spokane and gradually spread around through the North Pacific country. We obtained contracts with additional theatres, made more films, set up a small library film service, and continued on from there for about three years, three or four years, then moved to Denver, enlarging the business gradually.

Later on, about 20 years ago, we moved to Colorado Springs and built a larger plant, and that brings [395] us to date.

- dence on behalf of the Commission copies of your forms of contracts that are used with the theatres, and those forms of contracts include a clause which in substance provides that during the term of contract the theatre will not show any films for any other advertiser. How long has that form of provision been in your contracts?
- A. The present contract form is essentially the same form, with certain variations, that was established when we started in 30 years ago. The exclusive provision has been in there all that time, according to my best recollection: I am pretty sure we started out with that, although there have been cases where that particular so-called exclusive clause has been scratched out as it is at present, but it has been our practice to try to get exclusive contracts with theatres all the while.
- Q. So that the exclusive contracts with the theatres have been a custom of your business ever since you first started in 1919?
  - A. Yes, sir.
- Q. Now in the production of your library playlets, is it economically feasible to produce one of those playlets unless you know that you are going to have outlets for the showing of them?

A. Obviously not, Mr. Burgess. It would not be eco-

nomically possible to establish or maintain a library unless you had a great number of customers who were using that library over and over again. The

essence of that thought comes from the fact that the average cost of the playlet is high, and you cannot afford—or an individual advertiser, such as ours average in the smaller towns, could not afford to have a special production made for him. The manufacturer of a vacuum cleaner or a tire or refrigerator can afford to do that because he gets many uses from that film.

A streetcar line could not afford to run for one customer even if they got a dime for their fare. Because they have many customers and they use their seats over and over again, they can get by. The same thing applies to many different purposes.

The whole theory behind the establishment of a library

service was to have a multiplicity of uses.

Q. And in order to have that multiplicity of uses, you must have theatres available in order to show the film?

A. Very definitely, yes, sir. The four theatres that we started out with 30 years ago was merely a starting point and if we did not get beyond four theatres, the whole idea, the whole scheme, would have been a dud. As it is, at the present time we are servicing approximately 22,000 advertisers. Now, if we divide our library usage up among those advertisers, and we have been in business for 30 years—not with that many advertisers, but say, roughly, if we have had for a period of 30 years half that number of advertisers, which

way or the other, we would have been servicing over that period of time we'll say an average of half of 22,000 or maybe 10,000 advertisers per year. So when you divide the cost of the library up among 10,000 uses by 10,000 advertisers, you have the unit cost of production down to relatively small amounts, which has enabled our company, as well as a number of others, to plow back into the business for development a surplus, you might say, or earnings, which of course is not possible for a small operator if he stays too small.

Q. You can't go out and sell an advertiser one of your library playlets for showing unless you know that you have the theatre available to show that film on his screen, can you?

A. Correct. Without the theatres there just isn't

any such business as ours.

Q. Now you stated that the so-called exclusive clause has been a part of your business practice since the begining of your business. From a business standpoint, will you state why you have included that exclusive clause in your contracts?

A. We found out-

Mr. Collins: (interposing) Mr. Examiner, I think that I want to object to that.

Trial Examiner Kolb: I think the witness may state the reasons for including it in the contract. The objection will be overruled.

A. We felt at the beginning, and it has [420] been demonstrated since in practice, that to have an exclusive contract we have an opportunity to serve both the advertiser and the theatre better. In the first place, when we went into this thing we found that the only advertising on the screen, or virtually the only advertising on the screen was slides and which were on there for showing for approximately five seconds, certainly not a very good form of advertising, as far as the sale of the service, because with the still slides there was no opportunity to demonstrate anything except to show a picture which could be shown just as well on a billboard or in a newspaper. In other words, there was no motion to a slide.

And another thing that we found, there were, off and on, films of an inferior quality that were shown on theatres, oftentimes to the extent of wearing them out physically and having what they call "rainy" prints, floppy. So the so-called theatre screen advertising business, as we found it, was certainly nothing to be proud of from the standpoint of the theatre or the advertiser, nor was it particularly liked by the theatre audiences.

So we rather felt that we were doing the entire in-

dustry some benefit by insisting upon exclusive contracts so that we could exclude the relatively inferior type of advertising, and also we found that on the theatre screen, that every advertiser, particularly in the

small town, objected to his competitor appearing on the same screen at the same time. So it was

our early practice or policy to definitely promise the advertiser that when his ad went on the screen, that no competitor would be there at the same time.

Q. Now right at that point, when you say any com-

petitor, what do you mean?

A: I mean, as an example, another drug store, if he is a druggist, or another automobile dealer in the same class of automobiles, if he was an automobile dealer. In the small towns particularly, where we have really done most of our business, I mean excluding the large metropolitan areas where we have never been strong, the local merchant has a very dirty word to say for his competitor as a rule. That word I will not be allowed to use in court, but you may understand what I mean.

Now whether that is right or wrong, it isn't up to us to say, but it is a matter of jealousy, personal pride and personal jealousy. So for our medium we felt, and I think it has been proved justified, that the exclusive privilege offered to an advertiser was a very valuable service to him. He could not very well ask that with a newspaper, a newspaper just couldn't afford to run. A newspaper has too many spaces to sell. So it was reasonable to offer to him and maintain to him an exclusive. Where we did not have an exclusive in a theatre, where another slide salesman or motion picture advertising salesman had an opportunity to go into that town,

and we had sold, we'll say, a drug store and we [422] had offered him an exclusive on the screen with

a playlet for the week wher. his playlet appeared, another salesman comes in and sells another drug store, he takes the ad to the theatre, the theatre may or may not run it, but if he does, both of the drug stores are sore. They both felt they had been trimmed, somebody has made a promise that wasn't kept and they commence to cuss each other. They go to the theatre and each

one of them tells the theatre this naughty word about their competitor, and that is an irritant to the theatre

man, too.

So we have always striven to try and keep the medium as clean and desirable and as far away from objections as possible. We just can't get along without the theatres. We have got to make the theatre happy. To make the theatre happy, you have to keep him out of trouble with his local merchants, keep these merchants from talking naughty to him, because he has got to live with them and he goes to the same clubs, the same luncheon clubs with them, belongs to the same churches and so forth, and he is just a human being trying to get along.

And our competitors in the advertising business feel

pretty much the same way about it.

Mr. Collins: Now I want to object to that, Mr. Examiner.

Trial Examiner Kolb: That last statement [423] may be stricken.

The WITNESS: Pardon, sir?

Trial Examiner Kolb: We will strike the last statement about what your competitors think. They will have to testify to that.

The WITNESS: Oh, I beg your pardon.

Q. (By Mr. Burgess:) Is it necessary, Mr. Alexander, to know that you have a certain number of theatres on whose screen you are certain of being able to show your playlets in order to be able to provide your library service?

Mr. COLLINS: I object to that.

Trial Examiner Kolb: Will you read the question, Miss Reporter?

(The question was read by the reporter.)

Trial Examiner Kolb: The objection will be overruled.

A. Yes, sir.

Q. (By Mr. Burgess:) Will you explain why that is true?

A. It is true on account of the fact that the production and maintenance and renewal of a library set of films is contingent upon a sufficient volume of business being obtained from the prints from those library films.

The only way that we can maintain a sufficient volume is to have a great number of theatre spaces upon which we can sell the services that are rendered [424] by these prints in exhibition.

In other words, it is necessary to have an outlet

for your product before the product can be sold?

Yes. sir.

Now does it or does it not frequently happen that if you have a non-exclusive arrangement with the theatre, your salesmen may go into a community and sell an advertisement of one of your drug store library films and then find that the screen has been filled by some other competitor?

A. That sometimes happens, yes, sir, or could.

Q. So that having taken the ad, you have no means of showing it on the screen because someone else has filled the screen for that period of time?

A. That could be true with regard to that particular

event or sale. .

Mr. Collins: Mr. Examiner, I want to object to that and make a motion to strike the witness' answer. It shows that it is purely speculative on his part.

Mr. BURGESS: I will clarify that in the next question.

Mr. Collins: I want to object to that, though, and move to strike that answer.

Trial Examiner KOLB: Read the last question and

answer

[425] . (Last question and answer read by the re-

porter.)

Trial Examiner KOLB: He has testified that that has occurred, and it is sufficiently specific, I believe, to overrule the objection.

(By Mr. BURGESS:) That is not an infrequent

ocurrence, is it, Mr. Alexander?

A. Sir?

Q. That is not an infrequent occurrence, is it?

Well, I would say that it happens quite often, 1. can't say just how often. It is difficult—we have no definite records of that.

[436] MICHAEL J. McINANEY was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

## DIRECT EXAMINATION.

Q (By Mr. Burgess:) Will you state your full name?

A. Michael J. McInaney.

Q. In what business are you engaged, Mr. McInaney?

A. Film advertising.

Q. And for what organization or company do you work?

A. Alexander Film Company.

Q. What is your official connection with the Alexander Film Company?

A. Vice-president in charge of sales.

[437] Q. And are you the general sales manager of the company?

A. Yes.

Q. How long have you been associated with the Alexander Film Company?

A. 24 years.

Q. And how long have you been sales manager?

A. Been almost 22 years.

[445] Q. And the forms of contract which are used by the company include a clause which in substance provides that during the term of the contract the theatre will not show screen advertising for any other advertiser, is that correct?

A. That's right.

Q. From the general sales manager's point of view,

will you state why that clause is in the contract?

A. Well, as I outlined the salesman's angle, it is in there for his protection and the theatre's protection. A good theatre manager will usually want to select a clientele and be careful of what he puts on his screen, and over the past 30 years it hasn't been easy to sign theatre agreements. Theatres don't take advertising because they like it. It's a minor part of their operation. They do like the money involved and in a group of theatres

it can amount to something, but a theatre manager is very conscious of his program. That is his goods in trade and if he gets any kicks at the box office on a feature or a short, he takes that to heart. Now if he gets just two or three complaints on screen advertising, he gets dubious as to whether or not he should run it for the money involved.

So we have tried over the years to put on a product that will have public acceptance, that the audience will not resent too much. In this short length of film we can't make entertainment, but we try to make it entertaining so there will be the least possible resistance

on the part of the public. So the theatre mana-

[446] ger, if we can sell him on the idea that if he will deal exclusively with us, that we will send him good films and he will have very little resistance from the audience, we finally convince him that he should deal exclusively with us, and over the years we have signed up about eight or nine or ten thousand theatres.

Q. In other words, you can't afford to guar-[447] antee the theatre a minimum amount per week for the use of his screen unless you know you

have the screen available for your exclusive use?

A. Well, you wouldn't buy an automobile if everybody in town was going to use it, would you?

Q. I don't think you answered my question, Mr. Mc-

Inaney.

A. Yes, we demand that exclusive privilege where we put up money and guarantee a minimum guarantee.

Q. Now, does your exclusive feature of your contract have any relation to the production and maintenance of

your library or playlets?

A. Yes, I figure a Mbrary of playlets is an investment of three-quarters of a million dollars, and you couldn't put that kind of money into production unless you had the outlets to service it and to sell it.

Q. In other words, you have to have the [448] place to show your film before you can produce

your product, is that right?

A. That's right.

Q. And you have to have the place to show your

film before you can go to your advertiser to sell him the product?

A. That's right.

[482] Q. (By Mr. Burgess:) Mr. McInaney, from your experience as general sales manager of Alexander Film Company, do you find competition in the film advertising field?

A. And how!

- Q. Wll you explain what that competition consists of, as far as theatres are concerned?
- A. Well, I would say 60 to 75 per cent of our theatre contracts, of which we have about nine or ten thousand, expire every year, and it is a wide open field for ourselves or anybody else to contact that theatre and try to make agreement with him. So the competition is very

keen in the theatre end of it because that is the

[483] crux of our business.

Q. Is that competition among all of the film

advertising companies of the country?

A. Yes, every one of them are striving to get theatre contracts and take them away from each other, to get new theatres to agree to sign up for advertising privileges.

Q. In the practical operation of obtaining the con-

tracts with the theatres, how do you get them?

A. Well, we solicit the theatre-

Mr. Collins: (interposing) Mr. Examiner, I think that has been gone into four or five times, to the best of my knowledge, the operation and the method of getting the contracts from the theatres.

Mr. Burgess: Its relation to competition has not been

gone into at all.

Trial Examiner Kolb: I will let the witness answer.

A. Well, our policy has always been to have every field representative call on a theatre, whether they are screening our service or a competitive service or no service at all. If they are screening our competitive service of any type, they ask them for the type of contract and when it expires, and so on, and they send us a note on this which we put on a follow-up system, and prior to

the time that the theatre contract expires with any other company, we go back and see this theatre man and try to sign him up for our company. That is the

general method. [484]

Q. (By Mr. BURGESS:) Now in the general operation of the business who gets that theatre?

Well, we get our share of them but we lose a lot

of them, too.

Well, how do you get them, in getting your share?

A. Well, we show them a reel of film. We try to sell them on the superior quality. We ask him what he receives a year from the competing company. We-try to meet or better that price, if we think it is salable; if we overbid the theatre, are unable to sell in a town, we maybe lose a theatre back to competition. If we get the prices right and the quality of service is right and the merchants are willing to buy at the price we offer it to them at and we can keep his space filled up, he is satisfied, he maybe keeps doing business with us year after year.

Q. Are you constantly losing theatres that were pre-

viously under contract?

That's right. A.

And are you constantly gaining theatres that other

competitors had under contract?

Yes, sir, we have a score board that shows how many we lose each month and how many we gain. If we start to lose more than we gain, why, we do something about it.

Q. Now, is there competition so far as obtain-

ing the advertisers is concerned?

Yes.

Will you explain the nature of that competition?

A. In the local field, if you have an exclusive theatre agreement, the competition will try to get a competing theatre or theatres, or a theatre in a nearby situation, se that they can sell service in the same town to the same merchants for other theatres. And then much of our business is done on a trade territory campaign, and these accounts are usually located in one central point and their advertising is displayed in a widespread area. The various film company salesmen solicit these accounts and try to get them to buy service from them for the theatres which they can furnish service in. There

is very violent competition in that type of client.

On the manufacturer programs the competition is very keen. We and every other film distributing company try to sell the manufacturer-dealer co-operative program and compete on it and until one of them gets a sale; usually if the manufacturer buys a series of films from us, that program is good for a year, but on the succeeding year the other competitors try to go in and take the deal away from us. So In the sale of any class of advertiser, it is a very competitive field.

Q. In competing for the advertising, does it or does it not result many times in the lowest bid obtaining the

contract for the advertiser?

[486] A. That would be true in the production of films unless you could show them the superior quality. There's other factors besides the price. Now, you have to sell for what the local merchant will pay. If you put your prices too high they will not pay, and our volume of business has enabled us to maintain a low price for service. Our service rate has increased 17½ per cent since 1941, and our other costs have been much higher than that.

For example, labor is the major part of our cost of doing business, and that has increased 871/2 per cent or

86 per cent since 1941.

Q. When you say your service cost, you mean the cost

to the advertiser?

A. Yes. Our base service rate has increased  $17\frac{1}{2}$  per cent since 1941. I think our film cost has gone up 30 per cent since that time.

Q. The small increase in your cost to the advertiser,

is that by reason of competition?

A. Well, yes, we cannot sell in a town on a similar theatre for a higher rate than competition, or much higher. That governs the price of service to a local merchant and competition holds prices down; also volume of business enables us to keep our prices low.

WILLIAM HARDY HENDREN, JR. was thereupon [512] called as a witness for the respondent and, hav-

DIRECT EXAMINATION.

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(By Mr. Cozad:) Will you state your name, Mr. Hendren?

William Hardy Hendren, Jr. A.

Where do you live? . Q.

In Kansas City, Missouri. A.

And in what business are you engaged?

Motion Picture advertising, film advertising busi-A. ness.

And you are connected with the respondent in this case?

A. Yes

In what capacity? Q.

As president. A.

Mr. Hendren, how long has the United Film Service been engaged in the film advertising business?

A. Since 1924.

Q. Now, Mr. Hendren, could United produce library or special film or manufacturer-dealer film if it did not have an outlet for the sale of these films?

A. No.

Q. What is the method of securing this out-

[516] let?

The method of securing the outlet is to contract with theatres for screen space, in which to display our films.

You speak of contracting with theatres; do you

mean on an exclusive or non-exclusive basis?

A. On both bases.

Which method of contracting guarantees an outlet for United?

Well, the only method that guarantees us a definite market for our film is the exclusive film contract, because it is only in the case of the exclusive theatre

contract that we know that we have much space available, and that much space available for the screening of films.

[518] Q. Mr. Hendren, from your experience in the film advertising business, do theatres generally limit the amount of space which they have for sale?

A. Yes, they do.

Q. What is the usual limitation?

A. The usual limitation is 300 feet or not more than three minutes. That is the usual limitation.

Q. The space which the theatre allots for film advertising, does that constitute a remunerative sale, as far as the theatre is concerned, or is it free gratis, as far as the theatre owner?

A. No, that constitutes a very desirable extra source of revenue for the theatre, just as do some of the other concessions that the theatre has. The theatre man is in business to make money and if he builds a theatre or leases a theatre and there happens to be, for example, a small, little store just off of his lobby which might be available as a candy store or a store in which he can sell popcorn, he is interested in realizing the most revenue that he can from that store. So he either sells or leases the concession for the candy or the popcorn or he operates it himself to secure the extra revenue.

Well, in his program there is normally a breaking point between shows, and that breaking point can consist of only enough time to turn up the lights and let the audience that has seen the show file out and allow the new audience a chance to find seats, or it can consist of a little bit more time when the lights are put up and in its place he runs a limited amount of screen advertising that will produce revenue for him. So the time between shows represents a desirable source of extra

revenue and he uses it for screen advertising in

[520] many cases.

Q. In many instances, do you pay adequate consideration, do you pay him for the privilege of running screen advertising on his screen?

We pay him for the privilege and in many cases. it represents a very substantial portion of his total net profit in the operation of his theatre.

[522] Q. What is your experience insofar as the so-called first-run houses are concerned, either chain or independent, with respect to raving screening agreements with more than one film advertising com-

Mr. Collins: I object to that, Mr. Examiner.

Trial Examiner KOLB: The objection is overruled.

He may answer that.

A. My experience is that the better-class first-run circuit theatres do not desire to do business with two or more film advertising companies, but instead prefer to do business only with one.

Trial Examiner KolB: Now that answer will be stricken. The desire and preference of the theatre owner

I am not permitting him to testify to.

Mr. Cozad: Would you read the question, please?

(The question was read by the reporter.)

A. My experience is that they do business with only one company.

Q. Mr. Hendren, what is the average length [533] of United's exclusive contracts?

Well, that would be difficult to answer as to the average length.

What is the minimum and what is the maximum,

then?

Well, the minimum is a year. We do have some exclusive contracts which will run for five years, but most of them will run two or three years.

And as I understand it, the majority of your exclusive theatre screening agreements, then, run two

or three years?

A. Yes.

Q. What is the average of terminations of your exclusive theatre screening agreements per year?

A. I would estimate in the neighborhood of 40 per cent.

Q. So that each year there terminate by lapse of time approximately 40 per cent of all of your exclusive screening agreements?

A. Yes. It will vary between 40 and perhaps 50

per cent, but I would think nearer to 40 per cent.

[537] Q. Mr. Hendren, is United Film Service in direct and open competition with other film addistributors in the securing of theatre screening agreements and in the securing of advertising customers?

Mr. Collins: I object to that. That is a question for

the Commission's decision.

Trial Examiner KOLB: Read that question, please.

(The question was read by the reporter.) A

Trial Examiner KOLB: The objection will be overruled.

Mr. COLLINS: Mr. Examiner, I would like to make

this further objection, that it seems to be immaterial and unnecessary because if the Examiner will look at the complaint, that is exactly what we allege. So I can't see that it is necessary to go in and ask this man's

opinion about it.

Trial Examiner Kolb: Well, he has a right to testify whether or not he is in competition with other film producers or whether he is not. So I think that has been more or less admitted in the answer to start with, but if they want to ask the question I think it is proper to go ahead and answer.

The objection will be overruled.

[538] Mr. Cozad: You may answer.

Yes, we are.

Q. (By Mr. Cozad:) Is it common or uncommon practice, Mr. Hendren, for the United to secure screening agreements with theatres that have theretofore held screening arrangements with film advertising competitors?

A. Yes, it is common practice for us to do so. There is a great deal of competition in the securing of contracts with theatres, both independent theatres and circuit theatres, and as I stated before, approximately 40 per cent of all the contracts which we have with theatres containing exclusive clauses come up once a year for renewal, and when those times come we have a lot of

competition from the companies in the screen advertising business. Frequently we are successful in renewing our contracts, occasionally we will lose one to another competer who will take the circuit away from us because he makes a better proposition, overbids us, or at least the exhibitor thinks he is going to have a better proposition, and he elects to do business with him.

Q. Mr. Hendren, that competition is not limited to M. P. A. or Alexander Film Company or Reid H. Ray

Film Industries, is it?

No. it is not. We have competition from others. Not so long age we lost a circuit of theatres to the A. V. Cauger Film Service, and sometime ago we lost a circuit of theatres to an individual who is operating a screen advertising film service.

Q. Those two competitors you spoke of, is it not common practice for them to have exclusive screening agree-

ments with theatres?

Mr. Collins: I want to object to that.

Trial Examiner Kolb: What is your objection?

Mr. COLLINS: I object to his testifying as to the common practice of the others with reference to their contracts. I don't think that is material.

Trial Examiner KOLB: The objection will be sustained

as to the common practice.

[548] Mr. Hendren, you have stated that one of the reasons for film advertising distributors securing the exclusive screening agreements is that

[549] they must have a market for their product. Are there any other reasons?

A. Yes.

Q. Would you state what other reasons there are?

A. Only by having a known market for our product are we able to employ sales representatives and give them an opportunity to earn a good livelihood by knowing where they can go to sell screen advertising space, and when we have exclusive contracts with theatres, then our salesman, when assigned a territory in which there are a certain number of theatres with which we hold

exclusive contracts, has a definite known market where he can sell our screen advertising space, and he can, from that market, gauge his possible income. That is another good reason.

There are other good reasons. When we go in to solicit a manufacturer, on a manufacturer-dealer campaign, by having exclusive theatre contracts with theatres located in territories where he has key dealers, we can assure him of service for those dealers. If we were unable to give him a picture of our ability to serve a representative number of his key dealers, obviously he would be buying a pig in a poke. He wouldn't know what dealers could be served or have any assurance that they could be served.

It entails a very considerable outlay of capital to build a film library service and to maintain a service [550] organiation, and without a nucleus of evclusive theatre contracts, which is our basic market, we would be taking a very wild gamble to make the investment of capital necessary to build the proper film advertising service. That is another good reason.

It is much like a man going into business in a store. If he didn't have a definite—

Mr. Collins: (interposing) Mr. Examiner, I want to object to that as purely argumentative, the statement made by the witness.

Trial Examiner KOLB: He is giving his various reasons as to why there is an exclusive contract.

It appears to me now that you are duplicating, are you not?

The WITNESS: I didn't mean to, sir.

Q. (By Mr. Cozad:) Are there any other reasons, Mr. Hendren?

A. There are occasions when a film advertising company may need financial help, and when these occasions arise, in order to borrow money, one of the first things that any bank or any finance company wants to know before arranging financing for expansion and further improvement in building a business is to know, well, with what theatres and with what circuits do you hold

exclusive contracts, in other words, what is your known definite market?

[551] Q. Mr. Hendren, the reasons which you have just stated, have those been true from the inception of the film industry insofar as your connection with the film advertising industry is concerned?

Mr. Collins: I object to that.

Trial Examiner KOLB: The objection will be overruled:

A. Yes.

[564] C. J. MABRY was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

## DIRECT EXAMINATION.

Q. (By Mr. Rosen:) Will you state your name?

A. C. J. Mabry.

Q. Mr. Mabry, you are the president of Motion Picture Advertising Service Co., Inc.?

A. Yes.

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Q. How long have you been president?

A. Since June 1st, 1948.

Q. Mr. Johnson was president, and upon his death you were promoted from vice-president to president, were you not, at that time?

A. Yes.

Q. What had been your capacity with the company prior to your election as president?

A. Vice-president in charge of sales.

Q. How long have you been connected with the company?

A. Since January 1925, approximately 23 years.

Q. I want you, for the benefit of the record, to state the history of this company, the nature of the business conducted by it and the growth from the time the company commenced until the present time?

A. Well, the company was organized in September 1921, and from that time until June, 1925, the company acted as a distributor of advertising

films; it might be termed an exchange of advertising

The main source of films at that time was Adogram's in St. Louis and Harcol Film Company in New Orleans. They produced the films and sold them to us, and we used those films to serve various advertisers that we sold.

During those years, acting as strictly a distributor on exchange of advertising films, we didn't make so much progress. And we also noticed competition moving on us with a life action film. So we organized our own studio in June 1925, and became a producer as well as a distributor, distribution not limited to our own films, but including other advertising film campaigns that we could purchase or rent, and we felt were acceptable to the theatres that we served.

From that time on, we have steadily grown from one of the smallest companies into, I believe, the second largest in the business today, from a volume standpoint.

I found, Mr. Rosen, in my various contacts, especially in the East, that there are very few people that know what you mean when you say the film advertising business and the motion picture advertising business, and so that anyone that might be called on to read this testimony will fully understand what is meant by motion picture advertising business or the film advertising business

ness, I would like to explain just what connection that business has with the theatre business.

Q. Proceed.

A. Years ago, as far back as I remember, which is 1918 and 1920, theatres had what they called a drop curtain, and this curtain was dropped down between performances or between acts of the theatre. And on this curtain the theatre had a certain number of ads, painted ads, which represented a supplemental source of income to the theatre.

I also observed that most of the theatres had a program. On this program they had a certain number of printed ads.

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Now, this concession, or supplemental source of income, was usually rented out or leased out for the privilege of

selling ads on that curtain, it was leased to some printer, some sign painter. It was handled by only one sign company, only one painter, because that was the only practical way that it could be handled.

Then along came the slide. The slide was merely a still picture that was projected on the screen. That is

what it amounted to.

Following the slide came the motion picture advertising film, such as we distribute, which to a certain extent—which has, in fact, replaced slide films and the curtain ads.

Recently there has been a trend on the part of theatres to take on another supplemental source of income, that being clock advertising. The theatre has one or

two places in the lobby or front where a clock can be placed and they rent that out to a clock

advertising company who sells one or two ads on each clock. That clock advertising privilege is sold to only one company, one clock company.

Mr. Collins: Mr. Examiner, I want to object to that testimony and move to sake it from the record. It is purely argumentative, Mr. Examiner.

Trial Examiner KOLB: He is explaining different forms of advertising used in the theatres. I will let him

go ahead. The objection will be overruled.

A. (Continuing) And recently I noticed that there is another form of advertising that has appeared in theatres, this form being a slide film projector in the lobby of the theatre on which slide film advertising is projected, advertising candy, popcorn, gum and other articles that are sold at the candy counter in the theatre. That also is leased out by the theatre to only one company.

[568] Q. (By Mr. Rose). Mr. Mabry, suppose you proceed now to tell us the various branches of your business, the organization, how that has developed.

A. Well, we have in our business four, you might call it five, departments. We have a production department that produces a library service, a journal library servive; also produces what we term as special library service.

ive, and it produces special films to order of advertisers.

We have a service department whose responsibility is the receiving of those films and the shipping of the films to the theatres and receiving it back from the theatres and shipping them out to other theatres.

We have an accounting department, which of course handles the administrative and keeping the records.

We have a sales department whose duty is to contact advertisers and sell advertisers, and we have a theatre procurement department. The theatre procurement department's responsibility is to make agreements with theatres to display advertising films produced by us and advertising films that we might distribute for other producers.

I think that the functions of those department [569] ments—I mean just the name of the department tells you what its function is.

Q. Which department or departments were under your supervision and management, specifically, up to the time you became the president of the company?

A. The sales department and the theatre procure-

ment department.

Q. By the sales department you mean the securing of advertising for advertisers?

A. The securing of advertisers.

Q. And the securing of screening privileges from theatres?

A. And the securing of screening privileges was handled by the theatre procurement department under my supervision, and on most of the circuit deals I personally negotiated the deal, approved it.

Q. That is, the securing of the screening privileges?

A. Of the screening privileges.

Q. What kinds of contracts does your company make with regard to the securing of screening privileges?

A. Well, we make contracts, under the terms of which we rent or lease all of the time and space that the theatre has for advertising, and we then, of course, lease that for resale to other advertisers and distributors, and then we enter into what is termed non-exclusive con-

tracts with some theatres, under the terms of which we are granted the privilege of running certain ads up to certain limitations, the theatre placing limitations as to the number that they will run.

Q. Then there are two general categories into which these contracts fall, one is the so-called exclusive contract, and the other is a non-exclusive contract?

A. That's right.

Q. As I understand, the non-exclusive contract is one in which the theatre does not limit the screen space to one distributor but will permit more than one to show advertising on that screen?

A. They will permit more than one to show advertising on that screen provided they have space open, the usual theatre limiting the number of ads to a maximum

of six during any one week or at any one time.

Q. Now, with regard to the exclusive contract, there is in the record in this case some forms of contract that have been in use or are in use by your Company. I would like to ask you a question or two about those. Look for a moment at the one which is marked Commission's Exhibit 21; also look at the one, Commission's Exhibit 22; and then there is another one, Commission's Exhibit 23, Commission's Exhibit 24, Commission's Exhibit 25, and tell us which form is in current use, and would you explain for the record the differences between them?

A. Well, there is no material difference between any of these contracts. The wording is substantially

the same, the meaning is the same. The only big difference is in the layout, the way it is

laid out by the printer.

Q. Well, I notice that one of them, Exhibit No. 23, and also 24 and 25, have a caption, "Pro Rata Guarantee," which does not appear on the other exhibits. What significance has that?

Mr. Collins: Mr. Examiner, I submit the documents

speak for themselves.

Mr. Rosen: If the Trial Examiner please, there are a lot of blank spaces left in these various things, and just for the sake of clarity, I am not trying to change

the contracts, they are right there.

Trial Examiner Kolb: The witness may explain what a pro rata guarantee contract is. The objection will be overruled.

A. The pro rata guarantee contract—the word "pro rata" guarantee was put on that to differentiate this contract from a contract that was in common usage by competition, which was called a theatre collect contract.

Trial Examiner KOLB: You say 'was' in use; it is not

in use now?

The WITNESS: Very seldom do we come across it now. As a result, we dropped the words "pro rata guarantee" from our contract form.

Trial Examiner Kolb: Then Exhibits 23, 24 and 25, which are marked "pro rata" are old contracts

[572] which have not been used recently?

The WITNESS: Yes, they have not been used recently.

Trial Examiner Kolb: When were they discontinued? The WITNESS: Oh, I would say back in about 1945.

- Q. (By Mr. ROSEN;) Are you familiar with the theatre screening agreements presently in force with your company?
  - A. Yes.

Q: What is the length of time of the theatre screen-

ing agreements, the so-called exclusive contracts?

A. Well, the guarantee exclusives, one, two or three years, the no guarantee, that is, where we do not guarantee the theatre any minimum amount of money, will run one, two, three and in some cases five years.

Q. And the non-exclusive contracts, low long will

they run?

A. The non-exclusive contracts will run one, two, three and five years.

Q. On the average, what would you say about the length of term of the exclusive contract and the non-

exclusive contract with your company?

A. Well, I would say the average on the exclusive is about two years and the average on the non-exclusive is about three years. I make that statement based on the fact that we have approximately 4,600 theatres under

three years, that we have been called on to renew approximately 1500 of those agreements during each of the three years.

Q: Or about a third?

A. About a third. During the current year—I was checking up the other day, and I noticed that we are being called on this year to renew better than 3,000 of our theatre contracts that have come up for renewal.

Q. Out of the 4600?

A. Out of the 4600, which I haven't been able to find out just the reason why, unless it just happens that back in 1946 and '45 we were very aggressive in acquiring theatres, and they happened to fall due this year.

Q. Now, when a contract is made on a non-exclusive basis, what is physically done to the printed form which

contains the clause making it exclusive?

A. We merely scratch out the words which state that the exhibitor will not show advertising films that are furnished by any other than our company.

Q. And when the contract is made for a term of less than five years, what is done with the printed word

"five" that appears in these contracts?

A. We scratch out the word "five" and substitute in its place one, two, or three, dependent upon whether it is a one-year, two-year or three-year contract.

[577] Q. (By Mr. Rosen:) Mr. Mabry, does your company maintain a library, a syndicated film service?

A. My company maintains a library for approximately 40 different lines of business. By lines of business I mean such as drug stores, banks, service stations home appliance dealers, furniture stores, et cetera. We produce that library ourselves in our own studios.

Q. The studio is in constant production?

A. Our studios are in constant production. We turn out approximately 1500 individual advertising playlets each year.

Q. Would it be economically possible for you to main-

tain that library service if you did not have some exclusive theatre screening agreements?

Mr. COLLINS: I object to that.

Trial Examiner KOLB: The objection will be overruled.

A. We don't think so, Mr. Rosen, because without a few exclusive theatres we would have no definite market or outlet for those advertising films but would be de-

pendent upon a very uncertain outlet, which of course is the non-exclusive theatre, and we could.

n't afford to make the investment that is required to produce such a library of films, our average annual production cost running in excess of \$300,000 in the production of just those library films.

Q. I understand you to say that you have been in active charge, for many years, of the securing of screening privileges from theatres, did I get you right on that?

A. That's right.

Q. Do I understand from that that you mean you have personally handled that, or it has been just under

your supervision through your salesmen?

A. I have personally handled the signing up of most of the contracts that carry a minimum guarantee. In fact, I have accepted, I would say, near to 90 to 95 per cent of all those that have been signed up in the past ten years, with the exception of the three years that I was in the Navy, and at that time the president of the company accepted or signed those agreements.

Q. Is there competition between your company and others in the same line of business for the securing of

those screen privileges?

Mr. COLLINS: I want to object to that, Mr. Examiner. Trial Examiner Kolb: The objection will be overruled.

A. Yes, we run into competition in the secur-579] ing of every theatre contract, whether it be ex-

clusive, non-exclusive, or minimum guarantee. Recently I found that the theatres, or at least the better theatres than can command a minimum guarantee, are calling on us to bid against competition in practically all cases.

Q. You mean the theatre tries to get the most revenue it can from that screen?

A. The theatre is inviting us to bid for the screen space or the advertising space, the time on his screen.

Q. You mean by that, you have been invited by the theatre to bid in cases where you don't have contracts?

A. Yes, Mr. Rosen.

Q. What has been your experience, in charge of theatre procurement, in connection with losing some theatres

here and gaining some there, competition?

A. Well, naturally, competition outbids us in quite a number of cases and get theatres because they have a film product which is somewhat comparable, in fact is very similar to the film service or film product that we produce and that we distribute, and usually it gets down to a case of who will offer the theatre the most money or who will offer them the highest minimum guarantee.

Q. From time to time, do you receive any letters from various theatre owners with respect to these theatre screening agreements, that is, as to your securing this

contract where it has been previously held by a Competitor, or in other cases, competitors taking

them away from you and advising you to dis-

continue your service?

[580]

[581] (The documents referred to were marked Respondent's Exhibits 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25-A, 25-B, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, and 54 for identification.)

to the respondent's exhibit 5 through 33, which have been marked for identification in that order, I waive identification and agree that they may go in.

Mr. Rosen: Just so the witness may know-

Mr. Collins: Mr. Examiner, I have waived identification and I submit the documents speak for themselves.

Trial Examiner KOLB: Exhbits 5 to 33?

Mr. Collins: That is right.

Trial Examiner Kolb: Exhibits 5 to 33? of counsel, will be received in evidence as Respondent's Exhibits 5 to 33, inclusive.

(The documents referred to, heretofore marked Respondent's Exhibits 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25-A, 25-B, 26, 27, 28, 29, 30, 31, 32, and 33 for identification, were received in evidence.

Q. (By Mr. Rosen:) Generally what are the

letters marked 5 to 33, Mr. Mabry?

A. Those are letters we received from various theatres and theatre circuits, notifying us that they had given our competitors an exclusive screening agreement.

Q. Previous to that time, you had contracts with

these theatres?

A. Yes.

Q. And this v., a notice to you that they discontinued those arrangements and gave the business to competition?

A. That's right, Mr. Rosen.

[588] Mr. ROSEN: Well, counsel for respondent at this stage offers to prove by the witness, that the letters which have been marked for identification R-34 through R-54, are carbon copies of letters sent to this respondent through the mail, accompanying

589] theatre screening agreements which had been

formerly held by the addressee of the letter. The context of the letter indicates that a theatre screening agreement was being taken away from the competitor by the theatre and given to our company.

I submit that the evidence is relevant and proper and

it should be admitted in evidence—these letters.

Trial Examiner Kolb: Do you incorporate in your offer of proof the fact that the letters are addressed to the Alexander Film Company and other film companies, and not to the respondent in this case, as might appear from your statement?

Mr. Rosen: Well, I want the statement to be fair.

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I said that the letters were addressed to the addressee who was a competitor. But so that the record is clear, all of the letters are addressed to the addressee who purportedly received the original of which this is a carbon, and the addressee in no case is the Motion Picture Advertising Service Company. Does that make the record clear?

Trial Examiner Kolb: And the writer of the letter is not the respondent. With those changes, the offer of proof will be received as an offer of proof. The objection

will be sustained to the documents.

Mr. Rosen: Now I want to be clear on your ruling.
Trial Examiner Kolb: I sustain the objection to the
documents. However, I admitted your offer of
proof into the record. Proceed from there.

Q. (By Mr. Rosen:) Mr. Mabry, did your company on or about July 25, 1945, obtain a theatre screening agreement from the Pastime Theatre at Clayton Hill, Alabama, Winfield, Alabama, and Guin, Alabama—Pastime Theatres, I should have said?

A. It is Carbon Hill, Alabama, not Clayton Hill. Yes. Q. Do you know what company formerly held the

theatre screening agreement with those theatres?

A. I know of one of the companie. The Alexander Film Company did hold a screening agreement with those theatres.

Q. And subsequent to July 25, 1945, your company

obtained a contract with those theatres?

A. As I recall, the date of the contract was July 25, 1945.

Q. Well, you have a right to refer to these to refresh your recollection. (Hands documents to the witness.)

Mr. COLLINS: Mr. Examiner, I submit that the witness is now tendered documents and instruments, which he is not able to identify and which the Trial Examiner has ruled out, to refresh his memory to give a statement of facts.

Mr. Rosen: Well, I certainly, if Your Honor please, have a right to ask this witness, who is in charge of sales, whether he has contracts with certain theatres, and these documents having been received by him, even

though they are not admitted in evidence, would refresh the time when these contracts were in force. I [591] will go through each one of them. I submit that is perfectly fair.

Mr. Collins: I would like to make the further observation that the accusation has been made that I am trying to waste time, and I submit that the record is full of testimony here that has gone in without any objection, that this man's company has lost numerous contracts to competitors and that the competitors have lost numerous contracts to this man. Now, why—if that has gone in without objection, I can't understand why the waste of all this time:

Mr. Rosen: We<sup>11</sup>, I will admit that the evidence is corroborative of what has been said, but since you didn't object to the main statement, I don't see why you object to the corroboration of it. In any event, I will propose to ask the witness about each one of the theatres, whether we have a screening agreement.

Trial Examiner Kolb: Mr. Mabry, you say that you know that certain competitors have taken business away from you?

The WITNESS: Yes.

Trial Examiner Kolb: Is your knowledge based upon the information contained in those letters?

The WITNESS: Part of the knowledge is, and part of it is from actual contact with the theatres, and the actual

taking of the ads off the theatre screens and seeing competition's ads going in place of ours.

Trial Examiner Kolb: The witness may testify as to what he knows of his own knowledge, but not as to what he obtains from an examination of correspondence which has been refused admittance in this case.

- Q: (By Mr. Rosen:) Has your company a contract with the Tri-State Theatres, Dallas, Texas?
  - A. Yes.
- Q. Do you know the approximate time when that contract commenced?
  - A. The contract was renewed, our present contract

was renewed about sixty days ago. Those particular theatres have been under exclusive contract to us for,. I would say, approximately three years.

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Q. Do you know who formerly had a contract with those theatres, which one of your competitors, I mean?

A. I couldn't answer that. I know that the Alexander Film Company had a contract with them.

Q. You mean just prior to the time you got it, but you mean you don't know who had it previous to that?

A. Well, while Alexander had a contract, others might have had a contract with them, in fact, I think we did, a non-exclusive contract, and we got it on an exclusive basis and have held it on an exclusive basis since.

[593] Q. So for about the past three years you have had it on an exclusive basis?

A. That's right.

Q. Are you familiar with the Dunlap Theatres in Dallas?

A. Yes.

Q. Has M. P. A. a contract with the Dunlap Theatres at the present time?

A. Not at the present time. We recently lost those

theatres to competition.

Q. What period of time did you hold that contract?.

A. We had a contract up until approximately four months ago, when those particular theatres changed hands, and when they changed hands, competition secured an exclusive contract.

the recess I was going over, one by one with you, some copies of letters which related to certain theatre screening agreements which you had obtained Rather than to take the time to put in such corroborating proof, suppose I limit the testimony from here on out to just the general overall picture, and I will ask you a few questions along those lines which I think will serve the same purpose.

When you came with the company in 1924, it had been in operation for about three years, I understood you to say, or from 1921 to 1924?

A. I came with the company in January of 1925. The company had been in operation about three and a

half years then.

Q. How many theatre screening agreements did the company have at the time that you came with the company?

A. Approximately 300 operations, confined to the States of Mississippi, Louisiana, and the Southwestern

corner of Alabama.

Q. When you returned from your service in the Navy, it was in the latter part of 1945, was it not?

A. No, it was in January 1945.

Q. January. How many theatre screening agreements did the company have upon your

return from the Navy?

- A. Well, the company was shipping films off and on to approximately 3,000 theatres, but no attention had been given to the renewing of our screening agreements during the three years I was away. So we actually had agreements with possibly 1500 theatres.
- Q. But by oral arrangement were continuing to ship to about another 1500?

A. That's right.

Q. Making about 3,000 in all?

A. 3,000 we were operating with.

Q. That was in January 1945?

A. Yes.

Q. How many theatre screening agreements does

your company have now?

A. We have signed screening agreements with approximately 4,600 theatres now, and we do business on a verbal basis with possibly another 200.

Q. You testified as to the States' territory, that the company did business in in 1924; would you give us substantially the States' territory you now do business in?

A. The company now operates in, I think it is 28 States, from Arizona across to Texas, Arkansas, on up

to Kentucky into Pennsylvania and on up to Maine.

Q. So that in addition to renewing some of the contracts which had expired while you were in the Navy, that you said the total of which was about at that time 1500 that had expired and another 1500 in force, since your return agreements have been entered into with about another 1600 theatres?

A. In addition to those we had in January 1945,

that's right.

Q. Was it always the practice of your company to seek to obtain exclusive theatre screening agreements ever since you have been with the company?

A. Since January of 1925, it has been the practice to attempt to secure exclusive agreements with theatres that might be termed highly salable to advertisers. Those that we didn't consider too salable, we didn't offer them any guarantee. We would take an exclusive agreement if they offered it to us, of course.

Q. In the securing of those contracts from 1924 up to the present time, did you find that your competition was also securing or attempting to secure exclusive con-

tracts?

A. I found-

Mr. Collins: (interposing) I object to that.

Trial Examiner Kolb: State the ground of your ob-

jection.

Mr. Collins: It isn't a question of what the competition was doing because it may be that the competition is violating the law, and that would be no defense to a proceeding against this respondent.

Mr. ROSEN: If the Trial Examiner please, I

the government in the complaint is that the exclusive feature of these theatre screening agreements offers an insuperable obstacle, or at least a substantial obstacle to competitors of these four respondents in the obtaining of theatre screening agreements. I think I have a right to show that if that was the condition that existed from the inception of the industry and our company has succeeded in building up theatre contracts from 300 to now 4600 in the face of that exclusive fea-

ture that competitors were obtaining, that it is not an insuperable obstacle and that clause does not tend to substantially lessen competition. I want to show what the effect of that clause has been on the industry in general.

Trial Examiner Kolb: The objection will be sustained. Mr. Rosen: Counsel for respondent offers to prove by this witness that since the inception of this industry, exclusive screening—

Trial Examiner Kolb: (interposing) Just a minute, Mr. Rosen. You can approach what you are talking about in a different manner. I am taking the position that the question that you asked is not proper.

Mr. ROSEN: You mean the form of the question?

Trial Examiner Kolb: Yes. Let's don't clutter up the record with offers of proof. You have got an opportunity of presenting it in the proper way.

Mr. Rosen: Well, I didn't know the objection was to the form of the question, I thought it was to the

substance of it.

Would you give me my last question?
(The question was read by the reporter.)

Q. (By Mr. Rosen:) Mr. Mabry, you personally handled the securing of theatre screening agreements for M. P. A., did you not?

A. For approximately the past 15 years, yes.

Q. During that time, you have already testified that your company attempted to obtain from theatres exclusive contracts to screen your film ads, correct?

A. Yes, and actually secured them.

- Q. And in some cases you did. In going out to obtain these theatre screening agreements from theatre owners and managers, did you find in some cases that competition had the theatres under contract when you first called?
  - A. Yes.
- Q. Were such contracts in some cases exclusive contracts, in which the theatre screen had been leased to enly one distributor?

A. Yes.

Q. How would you go about getting those screens for M. P. A.?

A. Well, I would present various sales arguments to the effect that we could make more money for the exhibitor. That was the main one. To the effect that if he gave us a screening agreement, that we would provide him with a quality or standard of films which was superior to those he was then showing; that we maintained, or would maintain, a regular sales staff to work his theatres, and that he would be assured of a definite revenue month after month, and that by dealing with us only, that we would eliminate the confusion that quite often arose when two or three different companies were selling ads for his screen.

During recent years, I would say the past ten years, when we have been able to get films that were produced by other producers, I pointed out to him the fact that through the present theatre coverage we had and through our present extensive organization, that we were able to act as an exchange or distributor for producers, other producers of film, and that we had that film available for sale to advertisers, as well as the film which we produced, and by having this broad line of film or service to offer to advertisers, that we were in position to produce more revenue for him, or come nearer keeping his screen filled than those companies that did not have such an extensive library or service to offer. And, as a result, we were quite often quite successful in signing up exclusive agreements with theatres.

Q. In the case of these minimum guarantee contracts, you found it necessary in those cases to offer the theatre a minimum revenue, irrespective of the number of ads that you could put on the screen?

A. It is necessary to offer a minimum guarantee to most any individual theatre or circuit of theatres today that is popular with the merchants or salable to the merchants. There are very few first-run theatres that show ads today that will make an agreement with you unless you do give them some minimum guarantee.

Q. And the theatre owner was interested in the total revenue, the amount of those guarantees as compared.

with what competitors offered for the screen?

Mr. Collins: Mr. Examiner, I want to object to that and I would like to say here, to keep from interrupting counsel, that I will from now on after each question where counsel doesn't ask a question but makes a statement for the witness to place his stamp of approval.

Trial Examiner KOLB: You are asking for a continu-

ing objection?

Mr. COLLINS: No, I don't ask for a continuing ob-

jection.

Trial Examiner Kolb: You are not going to leave at to the Trial Examiner to decide whether or not an objection shall apply; you will have to make your own objection.

Mr. Collins: I am going to do that after each question. I object to this particular question as leading.

Trial Examiner Kolls: Read the question, please.

(The question was read by the reporter.)

Mr. ROSEN: I will withdraw the question and re-

Q. (By Mr. ROSEN:) By and large, Mr. Mabry, what would you say was the most important factor in your being able to obtain theatre screens exclusively for Motion Picture Advertising Service Company?

A. First, I would say, is the money-consideration

we offer.

Q. To the theatre?

A. To the theatre. Second, the fact that we have a product that is acceptable to other theatres.

[611] Q. (By Mr. ROSEN:) Mr. Mabry, at the hearing in New Orleans on April 28 of this year, Mr. Weigand of Commerce Pictures testified that he had tried to obtain a contract with the Jefferson Amusement Company and had not been successful in obtaining a theatre screening agreement. In 1944 was the time that he was talking about. Did Motion Picture Advertising Service Company obtain a theatre screening

agreement from Jefferson Amusement Company in 1944?

A. No, but I made an agreement with them in June 1945, after the Jefferson Amusement Company had given Mr. Weigand a test, which he mentioned in New Orleans, and after he had also given Mr. Reichart a test run on his theatres.

Q. Was the Jefferson Amusement Company at the time of entering into your contract, doing any advertis-

ing on its screens?

A. No, but they were open to a proposition and had been for approximately two years.

Q. Did you negotiate that contract yourself,

[612] personally?

A. I negotiated personally.

Q. If you went in in 1945, then I take it that that was after this test run had been made by Mr. Weigand?

A. It was after the test run by Mr. Weigand:

Q. And after these several pictures had been shown by Mr. Reichart they testified about in Houston?

A. It was afterwards.

Q. What sort of a contract did you get from him?

A. I made a three-year exclusive agreement with him. Mr. Rosen: That is all the questions I have.

CROSS-EXAMINATION

Q. (By Mr. COLLINS:) Mr. Mabry, you testified that those distributors who did not take the exclusive contracts had gone out of business, is that right?

A. Yes, sir.

Q. Now, was that because they didn't have any thea-

tres to get into?

A. No, sir, there were thousands of non-exclusive theatres they could get into, but non-exclusive theatres do not represent a definite market, and as a result, you cannot maintain or hold a sales force with all non-exclusive theatres, because it involves too great a risk on the part of the salesmen in time and traveling expense to properly cover those towns and those theatres where they operate on a non-exclusive basis.

[613] Q. Well, the fact remains that all those who haven't got exclusive contracts have gone out of

business?

A. Yes, as far as I know.

[619] Q. But if all of the theatres were left open, don't you think that you would stand as good a show as anybody else in making money out of the business?

A. I don't think anybody could make any money out of the business, even stay in business, if all the theatres were open, because you couldn't maintain a library service, which is essential to continuing in business, you couldn't maintain a sales force, which is essential to continue in business. At the present time, we may have an exclusive town here and another exclusive one here and two or three non-exclusives between. By routing our salesman to this exclusive one, he has to go through the other one, so he will stop and check with the theatre manager and will quite often find space open and quite often pick up a contract, which is to us a more or less supplemental source of income rather than a prime source of income.

Roughly, 75 per cent of the volume of business that we do is on screens that will not screen ads for other people. The other 25 per cent comes from that large group of non-exclusive theatres that we are constantly fighting our salesman to work and which he doesn't want to work, because the risk in time and traveling expense is so great, and if I didn't have those exclusive towns to route him to so he would pass through the non-exclusives, I would never get him in there.

Q. Then he goes to the exclusive towns because he knows that he hasn't got any competition to buck?

A. No, sir, he goes there because he knows he has something to sell. He has something definite to sell, he has certain spaces open. He carries with him—our salesman carries with him what I call a territory inventory. In that territory inventory he has a slip on every transaction in his territory, including here is a theatre that allows, we will say, four or five ads; back of that he has a slip on each customer sold and the service schedule on that customer. So he can tell at any

moment, by reference to this book, just what service is open in any town where we have an exclusive agreement. That isn't true on the non-exclusive agreements.

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Q. Now you do, I believe, work with approximately, I believe you said, 200 theatres with which you did not

have any contracts?

A. Other than a verbal arrangement, and most of that 200, or at least a half of that 200, happen to be theatres that will not run ads for anyone else except us.

Q. And with those you have success without the

existence of an exclusive contract, do you not?

A. My verbal arrangement with those particular-

Q. (Interposing) I would just like for you to answer my question.

A. Yes,

Q. And you have-

Mr. Rosen: (Interposing) I submit, though, the witness has a right to answer and then explain his answer.

You may explain your answer.

Mr. Collins: The witness hasn't asked for any time to explain.

Trial Examiner Kolb: Proceed with your next ques-

tion. Let's get through. ...

Q. (By Mr. Collins:) And you have any number of theatres under contract which wouldn't do any business with anyone else but you, even though you didn't have the contract, do you not, Mr. Mabry?

A. I stated I had approximately a hundred such theatres that I do business with on a verbal arrangement, which verbal arrangement, in my opinion, is just

as good as a written exclusive agreement.

Q. Well, you have any number, though, with which you have exclusive contracts, which would do business with you without the contracts, do you not?

A. I couldn't answer that, because I am doing business with them on a contract basis and I don't know whether they would do business on a non-contract basis or not. If I was a theatre I wouldn't, because I would have no assurance of that definite income month after month.

Q. You did business with them before you got the contract, didn't you?

A. With those particular theatres?

[622] Q. Yes,

A. No I stated I had approximately a hundred theatres that would do business with no one else. I have approximately 200 who are on verbal contracts. The other theatres insist on a contract.

Q. And you did do business with them, though, before

they insisted on a contract, did you not?

A. No, sir.

Q. You didn't do any business wth them?

A. Not the other 4400 we are talking about.

Q. And with those you never had done any business at all?

A. Not until I got a contract with them.

Q. Well, Mr. Mabry, did they know anything about the quality of your merchandise?

A. The theatres I do business with?

Q. No, those with whom you obtained contracts that you never had done business with before you received the contract?

A. Well, they knew the minute I made a solicitation for a screening agreement. They didn't know about it before that unless they did from some of my advertising. In that case, some of them wrote to me and said, "I would like for you to submit a proposition," and I did so and submitted samples of my product. Others, I approached them.

I have right now an appointment, within the next few days, with a large circuit of theatres that has written to

me and asked me to come in and make a bid and bring over my best in the way of product,

because they are going to adopt a policy of starting to run advertising. That's happened on numerous occasions.

Q. Now, when you run screen films for others, on what terms do you run those advertising films?

A. On the standard A.A.A. commission rate of 15 per cent commission and 2 per cent cash discount.

Q. That is to all distributors?

A. That is to all distributors and all advertising agencies. I look on another distributor as just another sales agency for me. Four A's stand for American Association of Advertising Agencies.

[627] REDIRECT EXAMINATION

Q. (By Mr. Rosen:) Mr. Mabry, the list that Mr. Collins asked you to look at, which is marked respondent's 4-A through 4-i, is headed "Producers of 35 Millimeter Advertising and Commercial Films." I'd like to show you the other exhibit that went in about the same time, marked respondent's 3, which is entitled, "Producers and distributors of 35 millimeter Film Advertising Trailers," and ask you if that is not the list of those companies who are competitors in the field of distributing film advertising?

A. I recognize quite a number of the names

[628] on here.

Q. As I understand, the heading of the first list respondent's 4, is, producers of commercial films, whereas list 3 is producers and distributors.

A. The heading on the No. 4 list I don't think is complete, because those people engage in the production as well as distribution of some type of advertising film.

Q. Well, be that as it may, do you recognize on the sheet, which is marked R-3, competitors of your company who do undertake to secure theatre screening agreements direct from the theatres and actually screen the production?

A. Yes.

Q. There is no use reading off, there they are.

A. Yes, I recognize a number of them.

Q. Would you say that is a partial or a complete list?

A. Well, I would say it is a partial list, because there is another film company in New Orleans that recently opened there and is giving us a lot of trouble. There are three of us operating in New Orleans now—four, in fact: Commerce Pictures, Harfilms—and what is the name of this new company that recently opened up there?—and of course the Alexander Film Company has given us a lot of trouble. There is also a new com-

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pany recently opened in Lake Charles, Louisiana, I don't see their name on here.

I saw in the paper the other day where there is a company opened up in San Antonio, Texas; their name doesn't appear on here.

Q. So you would say this is a partial list?

A. That is a partial list.

Q. But in general they are the chief competitors you would have in this business, except as you just stated?

A. I wouldn't say that because there are several other companies that we run into that are not listed on that.

Q. Do their names come to your mind?

A. I am just trying to think what the names are. They are not large companies. They are small companies that operate on the basis of moving from one territory to another territory. There was one that recently opened in Pittsburgh, Pennsylvania, that is approaching the subject of film advertising on a little different basis. They have a camera crew that moves around with the salesman. They have got these light cameras and the salesman goes into a town, the camera goes in at the same time with him, and he makes pictures of the man's place of business and his specialized advertising story and gets it shown on the theatres.

We have found a number of our exclusive theatres running this service. It came to our attention through complaints that we received from customers of ours that we were booking films in. He said, "I see that you put a competitor of mine on the screen during the same week I am on there. How come? And he has

got a different type of film." That is how I happend to learn about it.

Mr. Rosen. That is all I have to ask.

## RECROSS-EXAMINATION

- Q. (By Mr. Collins:) Do you recognize all of those
  - A. All of those people on that list?
- Q. Yes.

A. No, sir.

Q. If you don't recognize any of those people, how do you say that they are competitors of yours?

A. This list?

Q. Yes.

A. I didn't say that they were competitors of ours. I said I recognize some of our competitors. I recognize some of the names, was my answer.

Q. Didn't Mr. Rosen ask you if those were competi-

tors of yours?

A. I believe Mr. Rosen did, and I believe I answered to the effect that I recognized some of those names on there that they are competitors of ours.

Q. How many of those would you recognize as com-

petitors of yours?

Mr. Rosen: Suppose you look at it and put it in the record. (Hands document to the witness.)

[631] Q. (By Mr. Collins:) Call them out.

A. All right. Alexander Film Company, Colorado Springs, Colorado. Strickland Film Company, Atlanta, Georgia. Filmack Trailer Company, Chicago, Illinois. I see the name Parrot Films on here, but I haven't stumbled into it. I know the name very well and I know they engage in the business, but I haven't stumbled into them on the territory we cover.

Commerce Pictures, New Orleans, Louisiana; Harfilms, Inc., New Orleans, Louisiana. Ambuter Motion Picture Company, Boston, Massachusetts. Reid H. Ray Film Industries, St. Paul, Minnesota. A. V. Cauger Service, Independence, Missouri. United Film Service, Kansas City, Missouri. National Screen Service Company, New York, New York. Jamieson Film Laboratories, Dallas,

Texas.

Q. Now, how many of those would you say were comparable to the Motion Picture Advertising Company?

A. You mean in size?

Yes.

A. From the standpoint of volume done?

Q. Yes.

A. I am not familiar with-

Q. I am speaking about volume of business. You

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travel over quite a bit of territory, don't you?

A. Yes, sir.

[632] Q. And you are very familiar with the volume of business done by the different concerns, are you not?

A. I have what I think is fairly accurate information as to the volume of business done by the other companies.

Q. All right now, Mr. Mabry, with that in mind would you give to us the names of those that you consider comparable to the Motion Picture Advertising Company?

A. From a volume standpoint?

Q. Yes.

A. Alexander Film Company, United Film Service, Reid Ray Industries, and possibly A. V. Cauger Service. I am not too familiar with their operations but they have been moving in recently on us quite a bit in the Arkansas and Kentucky, Tennessee area, I have reports on. But the others, from the best of my knowledge, I don't think that—well, I would say National Screen Service, they are getting very active in the distribution of films for national advertisers. They haven't bothered us in the strictly local field yet.

Q. And those that you have named are the only ones who are giving you any serious trouble, are they not, Mr. Mabry?

A. No, Commerce Pictures is giving us quite a bit of trouble. They are located in New Orleans. They have taken theatres away from us recently on an exclusive basis, and I understand that they are more or less deviating from their plan of having state distributors, and they are now starting to handle their

own distribution and sales on a direct basis, that is, through their own sales organization and service organization.

This Strickland Film Company in Atlanta gives us a lot of trouble at certain seasons of the year, particularly around the Christmas season. They go out and sell a lot of advertisers on the idea of sponsoring a Merry Christmas and a Happy New Year type of service.

Q. Only spasmodic?

A. Well, they are spasmodic, but I am told that they are getting a considerable amount of money from the advertisers, which means that it cuts down on the amount of schedule that I can sell the advertiser when I go to him. They charge an enormous amount of money for that service, which might cut an every-other-week contract down to an every-fourth-week contract, and they do it, of course, through the influence of the theatre. The theatre has a certain amount of influence, the most influence being the pass. So he gives them a few annual passes to hand, out and they are able to get a much higher rate for their service.

Q. Did you ever see them hand out any annual

passes?

A. Yes.

Q. You have seen the theatres hand them out?

A. I have had them sent to me to hand out. The fact is—

Q. (Interposing) So they were not only handing out to that company, but they were also handing out to you?

A. Not as a general practice.

[634] Q. Oh, do they do it as a general practice to

the others, from your knowledge?

A. Only from reports received from our salesmen, which in my opinion is just as good as if I had been there and seen it myself.

Q. You don't know of your own personal knowledge?

A. No.

Q. You do know that they send them to you?

A. I do know some have handed-passes to me to use in selling contracts.

Q. Now, there, the merchants liked the merchandise of your competitor so well until they were willing to pay more for the other merchandise than they were paying for yours?

A. No, he was willing to pay more in order to get

that pass.

Q. I thought you said you never did see them give any passes only to you?

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A. I said that I knew from reports received from my sales organization.

Q. You knew from hearsay?
A. That is the way I get the information that they are in competition with us, from our salesmen. I haven't un directly into competition with this Merry Christmas, Happy New Year service, but I have a sufficient numper of reports from my salesmen to know it is going on.

Q. So you are reporting in your testimony

[635] what somebody else told you?

A. In regard to that particular testimony regarding the Strickland Film Company at Atlanta, I

But the fact remains that they did pay more for Q. the other fellow's merchandise than they paid for yours?

A. That is what my salesmen told me. Mr. Collins: I believe that is all.

JAMES G. RANDAARD was thereupon called as 656 a witness for the Respondent and, having been first duly sworn, testified as follows:

## DIRECT EXAMINATION

(By Mr. Hodgson:) Your full name?

James G. Randgaard.

Where do you live?

Staples, Minnesota."

Q. What is your or apation?

Theatre owner. A.

·,Q. Do you own a theatre in Staples. I do.

A.

was.

[657]

Are you also connected with the Home Theatre Company?

A. I am.

What is your connection with the Home Theatre Corporation?

I am president.

You have heard the testimony of Mr. Nygaard this morning?

A. I have.

Q. Heard all of it, did you?

A. Yes.

Q. The theatre you own in Staples is not—do I understand, is not part of the Home Theatre Company chain?

A. It is not.

Q. Yes. You independently own that theatre.

A. I do.

[660] Q. Are you under exclusive contract now with Ray-Bell Films with respect to the independent theatre at Staples?

A. I am, yes.

Q. Since what date?

A. Sometime in '46. September, I believe.

Q. Prior to that did your independent theatre show film ads?

A. Yes, sir.

Q. Did you have any exclusive contracts with respect to film ads prior to that time?

A. No, sir.

Q. What was your experience with respect to the film ad business prior to the time you had the exclusive contract?

A. My experience was that if I wasn't there there would be some fellow come in from out of town or some other company and sell a merchant and overload the screen. That is the trouble I was getting with that kind of set-up. In other words, I would have seven or eight on instead of six—five or six.

Q. Did you ever also have an experience that when the theatre was open, so to speak, the screen wasn't

filled up to the maximum of six.

A. That would happen in some cases too, yes.

[661] Q. What has been your experience with respect to the screen loads since you have had your exclusive contract with Ray-Bell Films?

A. It's been 100%, much better supervised.

Q. Your experience with the independent theatre at Staples also applies to your experience with the Home Theatre chain of theatres.

A. Same.

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Tr Th Tr [667] MARTIN LEBEDOFF was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

Q. (By Mr. Burgess:) Will you state your full

A. Martin Lebedoff.

Q. What business are you engaged in, Mr. Lebedoff?

. Operate two motion picture theatres. Are you the owner or manager?

A They are owned by a corporation which I am an officer of.

Q. How long have you been in the business of operating theatres, Mr. Lebedoff?

A. Twenty years.

Q. During your operation of theatres have you run film advertising on the screens f the theatres which you have been connected with?

A. Yés.

Q. Have you had the experience of running screen advertising for more than one advertising film company at a time?

A. Yes.

[668] Q. Do you at this time do business with more

than one film advertising company?

Q. Will you state what your experience has been in handling film advertising for more than one advertising film company at a time?

Mr. Collins: Mr. Examiner, I want to object to that, because I think the testimony is immaterial and irrele-

vant.

Mr. Burgess: Mr. Examiner, this is following, I think, a perfectly competent line. It's asking a theatre owner or manager for information as to his experience in the business. It isn't asking him to reach conclusions or reasons for doing a particular thing, but it's asking him to explain what his experiences have been.

Trial Examiner Kolb: Objection will be overruled.

The WITNESS: May I proceed? Trial Examiner Kolb: Yes.

The WITNESS: At a period of time when we had more than one advertiser on our screens we found it to be unsatisfactory because it bred competition between the two advertisers and tending to lessen our personal standing in our community because the businessmen we were associated with in our own particular neighborhoods,

couldn't quite understand what was going on when one salesman would quote a price and set of condi-[669] tions and another would quote a different price and set of conditions, and we depend a lot on

good will for a good portion of our business.

Mr. Collins: Mr. Examiner I want to object to that line of testimony. I want to object to the statement made by the witness and if the ruling is that the testimony should go in I would like for the witness to be advised to confine himself to the experience that they have had, and not for an argument.

Trial Examiner Kolb: Read that answer, so far as it's gone.

(The answer was read by the reporter.)

Trial Examiner Kolb: The objection will be overruled with the understanding that, as previously agreed upon, Mr. Collins, the attorney for Complainant, will have an objection to the testimony of this witness as being in-competent, irrelevant and immaterial. The Trial Examiner will reserve disposition of this motion subject to a motion to strike at the close of the testimony.

Mr. Burgess: Mr. Trial Examiner, it seems to me that this is following a different line than calling upon the theatre manager to testify as to why he prefers a particular thing, asking him to state his experiences in order that the record may show what the experience of the theatre has been in the handling of his business. It

isn't quite the same thing as we were talking

about this morning, and I am attempting to avoid that very thing, to have the witness state

it in a different manner.

Trial Examiner KOLB: Off the record.

Discussion off the record.)

Trial Examiner KOLB: On the record.

(By Mr. BURGESS:) You may proceed.

A. It was also our experience that our revenue suffered under having more than one company servicing our screen. We received less for our share when we had more than one serving the theatre and the service we received was inferior because at times there were ads of two competing businesses in the neighborhood on the screen at the same time, or even under the same period of the contract and that led to difficulty with some of the advertisers, and also occasioned a surplus of ads in one week and a dearth in another week, instead of having that evened out, although there are some theatregoers that do object to seeing too many ads when going to the theatre, and I would like to keep them at a minimum number. I think that's about it.

Q. Do you recall the number of screen ads that are shown on your screens?

A. Yes.

Q. How many ads do you permit at any one [671] time?

A. I am not exactly familiar with it. There is a little latitude. I think either three or four.

Q. What has been your experience in doing business

with only one screen advertising company?

A. We find that our return has been greater, our service has been better. We have been able to keep the good will of the neighborhood merchants because there has been no competition for screen ads among them. There hasn't been two ads for one type of business running at the same time and we have been able to supervise the operating of it a little easier. After all, there are less people to do business with. We don't have six ads one week and none the following. We have approximately three each week.

Q. Do you from time to time renew your arrangements for doing business with one company or change

it over to another company?

A. Yes.

Q. At the time that your contract for renewal or change-over comes up, do you have other screen advertising companies come in and attempt to get your business?

A. Yes.

Q. When you have two or more of the screen advertising companies attempting to obtain the contract for your screens, what items do you give consideration to in granting a contract?

A. Revenue that I can receive and service

[672] that I can get.

Q Is it true that when you say revenue received, you mean the highest amount that will be paid to you for the screening is a consideration that you—

A. (Interposing) It is a combination of price per

ad and total revenue over the term of the contract.

Q. So that as between two or more screen advertising companies with a comparable product it is a question of the revenue to you.

A. I would say that is the chief consideration.

Mr. Burgess: I think that's all.

[679] Q. That condition has been for fifteen years with one theatre.

A. No. It wasn't always exclusive. •

Q. It wasn't.

A. No, sir, we have advertised with various companies at various times, sometimes on an exclusive basis and sometimes we have had more than one at the same time.

Q. How long have you had a contract on the exclusive basis?

A. The last three or four years. Prior to that we had two in there for a period of time, probably two or three or four years. I am not exactly sure.

Q. And they could not keep your screen filled.

A. Beg your pardon?

Q. The two could not keep your screen filled with film advertising.

A. They didn't.

[680] JOHN BERNARD DOUGHERTY was thereupon called as a witness for the Respondent and, having been previously sworn, testified as follows:

Trial Examiner KOLB: I think Mr. Dougherty was sworn at the previous hearing.

Q. (By Mr. BURGESS:) Will you state your full

name?.

A. John Bernard Dougherty.

You are in the film advertising business.

A:

You are a distributor of film ads.

A. Yes, sir.

You have testified previously in this proceeding.

A. Yes.
Q. How long have you been in the film ad business?
A. Twenty-five years.
Q. Did you at any time use films produced by the Parrott Film Company?

A. Yes, sir.

Q. Will you state what your experience was in the use of those films as far as the theatres and your advertisers' satisfaction was concerned?

Mr. COLLINS: Mr. Examiner, I want to object

to that.

Trial Examiner Kolb: What was your objection, Mr. Collins?

Mr. COLLINS: I don't think it is material what their experience was with reference to the satisfactionwhether or not the films of the Parrot Film Company were satisfactory or unsatisfactory.

Trial Examiner Kolb: I think the evidence might be material as to whether or not they are able to place the films at the various theatres on that basis. I will overrule the objection.

(By Mr. Burgess:) I can restate the question but I think we will just go ahead-just answer the question.

Will you answer the question, Mr. Dougherty?

A. About Parrott Films?

Q. Yes.

Yes, I used Parrott films during the war when films, of course, were rather hard to get and, although the Parrott Film Company did the very best it could for me in supplying the films, they were, at the time I received them some three years old-they had been pro-

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duced three or four years previously. In other words,
I mean they had nothing current to give me.

[682] They were dated back three or four years, but that is the best they could give me. The second thing was that in Minneapolis and St. Paul we used a length of film, sixty feet of film, and their films were only twenty feet long instead of sixty, so they were too short, and there wasn't anything I could do about that, because that is all they had and the advertisers here in Minneapolis were not satisfied with that type of film. However, I do not blame the Parrott Film for that. I blame it more on circumstances on account of the war, but the whole sum and substance of that was that I could not hold the accounts I had on the screen by using these Parrott films because they were not suitable for the advertisers. In most cases they were too old. They weren't the right footage.

Q. Did you have complaints from your advertising customers?

A. Yes, we had that to battle all the way through, that the films were old and they were too short and they weren't suitable for their business.

Q. Did you lose advertising business because of that film?

A. We lost a percentage of our business through the fact that these films didn't have enough to satisfy the advertiser.

Q. Did you have complaints from the theatres in the use of those films?

A. Yes, in some cases the theatre men either told me to get these films off the screen or get out of the theatre, that we had to remedy that, we had to change

and get a better product. They didn't care how [683] we got it but they told me we had to get it.

Q. When did you stop using Parrott films?

A. I stopped using those four and a half years ago, I believe, with one or two exceptions where they have made a special film for me and which they retained the negative and I ordered prints of that negative, but I ordered no more of their so-called playlets that I had a used for four and a half years, I believe. I don't know

just how accurate that is. That is pretty close.

Q. Whose films did you obtain after you quit using the Parrott films? Whose film did you obtain after you sto bed using the Parrott films?

A. I obtained the United Film Ad Service films for

a short duration.

Q. Was that film a satisfactory type of film?

A. Yes, it was.

Q. Did you have any complaints from your advertisers on the use of that film?

A. No, we did not have any complaints.

Q. And did you have any complaints from the theatres?

A. No. They congratulated me.

Q. You testified that you lost business while using the Parrot films. Did you regain any of that business after you started—

A. (Interposing) On the strength of the better film we did regain and recover a certain

amount of the business.

Q. What is the condition of your business at the

present time?

A. Well, it is better than it has ever been in the history of the game, for the simple reason that we made one more change from United film to the Alexander film. The reason for my change was purely a financial set-up with me, but since I have been using the Alexander films I have been able to get a better class of advertisers. I have been able to keep the ones I have and I have been able to go up a notch in the category of the advertisers on account of Alexander films, for the simple reasons that they have everything that I would require in Minneapolis or St. Paul to service an account properly.

Q. Your business is now gradually growing, is that

correct?

A. It has increased since the time that I started projecting Alexander films on the screen, yes.

Q. You did recover some of your business while you

were using United films.

A. We had even recovered some we did not get when

I was with United films. I've got that since I went

over into my new set-up on Alexander films.

Q. In the operation of your business have you had the experience of dealing with theatres where more than one screen advertising company were showing their ads?

A. Yes, I have had a lot of experience.

[685] Q. As a distributor what has been your experience where there is more than one screen ad company showing on the same screen?

Mr. Collins: Mr. Examiner, I want to object to that on the same grounds I made with reference to the testimony of the other witnesses on that line of testimony.

Trial Examiner Kolb: Objection will be overruled.

Q. (By Mr. Burgess:) You may answer, Mr.

Dougherty.

A. My experience in trying to conduct this business in the Twin Cities has just been this: That unless I have an agreement with a theatre man to sell advertising for his screen on an exclusive basis I cannot stay in business. That is the main point with me. I just simply cannot be in the advertising business without an agreement from a theatre on an exclusive basis. However, I have operated perhaps a little different than some of them to this extent: My contract, in the true sense of the word, is not an exclusive contract with any theatre man. It is an agreement whereby I sell and run film advertising on his screen, but it does not bar any other company from operating on that screen through our company. The main idea of getting a contract from a theatre man is to protect him-protect myself.

Mr. COLLINS: Mr. Examiner, I submit that the Respondent has able counsel and I want to object

[686] to this witness trying to take over the duties of the counsel in arguing this case, and I move to strike this testimony, his last statement in the record.

Trial Examiner KOLB: Off the record.

Discussion off the record.)

Trial Examiner Kolb: On the record. Overrule the objection with the suggestion, however, that the witness follow the questions asked by the examining attorney

and not volunteer statements.

. Mr. Burgess: I think the question probably was con-

ducive to the witness going far astray.

Q. (By Mr. Burgess:) Will you proceed with your answer, Mr. Dougherty, and limit your answer to your experience or experiences in the field of advertising where there is more than one distributor on the screen at the same time.

A. Just what specific question would you like to ask me now?

Q. Just what are your experiences—do you have.

anything to add to what you have already said?

A. No, I think that saying that I can't operate without an exclusive contract and stay in business—I think that covers the whole thing. In my particular case if I have got an agreement with a theatre to show my advertising I am not in business.

Q. You mean by that you must have a speci-[687] fic outlet or number of outlets in order to con-

duct your business at all?

A. I must have a place to show my ads.

Mr. Burgess: That's all.

Mr. Collins: Just a minute, Mr. Dougherty. CROSS-EXAMINATION.

Q. By Mr. COLLINS: Mr. Dougherty, you remember being interviewed by Mr. Van Wagoner of the Federal Trade Commission on May 4th, 1944?

A. I do.

Q. You remember that Mr. Van Wagoner on that occasion asked you with reference to the Parrott films?

A. Yes.

Q. And you told him that you were able to get some new films from Parrott, did you not?

A. What? I didn't hear you.

- Q. Didn't you tell Mr. Van Wagoner on that occasion that you were able to get some new films from Parrott?
  - A. New film?

Q. Yes.

A. Only special film, only what we put together ourselves and ordered from them, but nothing out of their stock in trade, library films. I will explain the word library—that means a classification of a group of films that will cover all lines of business that I may sell to, each and every line.

Q. You remember discussing this matter with

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[688] us on the last—that is, when we were in Minneapolis, do you not?

A. Yes.

Q. Don't you remember telling me on that occasion that the Parrott Film Company handled library films?

A. That they were

Q. (Interposing) That they handle library films.

A. They had library films.

Q. Yes.

A. That's right, I-said they had library films.

Q. And you told me the other companies had library films, did you not?

A. That is correct.

Q. And did you make this statement on that occasion down in your office here that "library films were library films, regardless of who made them"?

A. Well, that would sound like an awful foolish question to me, about library films being library films,

to this extent-

Q. (Interposing) I am not asking you how foolish it may be. There may be a lot of this that I think is rather foolish, too, but did you not make that statement on that occasion?

A. That library films are library films? Correct.

Q. Yes, and didn't you make the statement to Mr. Van Wagoner that you had lost a third of your business on account of these exclusive contracts?

A. On a certain group of theatres, yes.

[689] Q. And didn't you also make the statement to Mr. Van Wagoner that these exclusive contracts were a pain in the neck to you?

A. I mighe have felt hurt about them because I would

have liked to have had them.

Q.s And didn't you tell me on the occasion when we discussed this with you in your office down here that they were not necessary to the business?

A. What was not necessary?

Q. The exclusive contracts were not necessary to the business.

A. Well, I couldn't operate without an exclusive contract.

Q. I am asking you what you stated to me on the occasion that I discussed it with you in your office back in the spring of this year.

Mr. Burgess: Mr. Examiner-

The WITNESS: (Interposing) That's all right, let's get

Mr. Burgess: (Interposing) Mr. Collins is now attempting to get into evidence something that he didn't see fit to put in evidence when this man was his own witness. He called him as his own witness and now he is attempting to impeach his own witness.

Mr. Collins: I am not attempting to impeach my own witness. This man called him back here and I submit, Mr. Examiner, I'm very thoroughly taken by surprise at the testimony of this witness. I can't understand—

Mr. Burgess: (Interposing) It's no fault of .

[690] mine.

Trial Examiner Kolb: I think this cross-examination up to this point is proper. Objection will be overruled.

The WITNESS: Well, I want one thing thoroughly understood, that I am not going to lie knowingly on my testimony, no matter what the question is.

Q. (By Mr. COLLINS:) Are you able to show any of the films, your advertising films, in theatres with which the Alexander Film Company has exclusive contracts?

A. To advertise them in those theatres?

Q. Yes.

A. Yes, I do.

Q. How long have you been doing that, Mr. Dough-

A. For this last two years. I made a mistake the last time you took testimony here by overlooking the fact. I said no; but I should have said yes. I was operating one of the theatres in St. Paul at the time I said no, so I was operating two years or more ago—I was running my film in one of their theatres.

Mr. Collins: Mr. Examiner, I would like to have a minute here.

Trial Examiner Kolb: Beg your pardon?

Mr. Collins: I would like to have just a minute here to read this.

[691] Trial Examiner Kolb: Take a recess for five minutes.

(A short recess was taken.)

Trial Examiner Kolb: Ready to go ahead, Mr. Collins?

Mr. COLLINS: Yes.

Q. (By Mr. Collins:) Mr. Dougherty, you remember in April of this year that a Mr. Depro and I called at your office and discussed this matter with you?

A. Yes.

Q. And you remember during the course of that interview that I stated to you that the Respondents in this case were contending that it was absolutely necessary in the operation of the business to have exclusive contracts?

A. Yes.

Q. And do you remember that you stated to me on that occas on that it was not necessary to have an exclusive contract?

A. I would like to explain that to you.

Q. Just answer my question, Mr. Dougherty.

A. I can't recall. I would like to see just my answers—me remembering back what I said in April is pretty hard. Now, if you tell me right out that I said that, that's different. Then I will try to answer that.

Q. I am not telling you, Mr. Dougherty, anything you said or may have said. I am asking if you remem-

ber having said that.

A. I can't remember exactly what I said on [692] that occasion about an exclusive contract.

don't believe that I would talk against an exclusive contract because I actually had exclusive contracts at that time.

Q. Don't you recall on that occasion, Mr. Dougherty, that you said that the contracts with the advertisers run for a specific length of time and that was a sufficient length of time for the advertiser to contract with the theatre?

A. I might have said that. Yes. I might have said

that, yes.

Q. And don't you recall on that occasion that you stated yourself that you took the exclusive contracts in Minneapolis in self defense?

A. Yes, that's definite.

Q. Do you recall on that occasion that you took great pains to point out to Mr. Depro and myself the difference between those contracts and the contract of the Alexander Film Company?

A. Yes, sir.

Q. And the Ray-Bell Film Company.

A. Yes, sir.

Q. And do you recall on that occasion what you stated yourself with reference to the extent of the business that you had lost because of the existence of the exclusive contracts held by your competitors?

A. I would make such a statement, yes.

Mr. Collins: That's all.

### REDIRECT EXAMINATION.

[693] Q. (By Mr. BURGESS:) Mr. Dougherty, it is true, is it not, that the library film that you were obtaining from the Parrott Film Company was old and out-of-date during the war, was it not?

- A. I think in answering that it will clear up in Mr. Collins' mind, as well as mine, a little difference of opinion between him and I—library film is library film, as M. Collins asked me. However, the date of the library film makes a vast difference in the effect of library film. The films that I got from the Parrott Film Company, as stated, were made before the war and they have made no library films since that time. Therefore it became out-of-date. So I merely changed from their library film, which was out-of-date and which I could not use, to library film that Alexander put out, which is made according to the times, that is, it is right up to the minute. Is that what you want to know?
- Q. Yes. Now, their library film was also a shorter film than the Alexander Film, was it not?

A. Half as long, exactly half as long.

Q. So that while library film may be library film, there are different kinds of library film.

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A. Very much so, yes.

Q. Has it ever been your feeling, Mr. Dougherty, that you could not continue to maintain your business without exclusive contracts.

Mr. COLLINS: Is object to that.

[694] Trial Examiner KOLB: Objection overruled.

The WITNESS: Answer it?

Mr. Burgess: Yes.

The Witness: It isn't pessible for me to stay in business and attempt to buck other companies without protection from the theatre man with an exclusive contract. I just simply have to quit—all my efforts in these past years have gone for nothing.

Q. (By Mr. Burgess:) Now, it may be true, as asked by Mr. Collins, that you may have stated to him that it was not necessary to have an exclusive contract with the theatre for any longer than the advertiser's contract,

is that right?

A. That is correct, because we do not endeavor—at least I never have made a practice of asking a theatre man to give me a long time contract. I have always left open to the theatre man that "should we wish to change . . ." that in writing a contract for one or two years, that at the end of that time if he is not satisfied with the way I have conducted my business and run the films on his screen he may make a change to some other company. That is the theatre man's right.

Q. It may also be true you told Mr. Collins you have lost business to other advertising film companies be-

cause of the exclusive contracts.

A. Of course I have lost business.

[695] Q. Do you recall in the cross-examination by Mr. Donnelly when you were on the stand last spring, your testimony, in which you said in part: "I would say that the average theatre man prefers to do business with one film company"?

A. I remember that.

Q. Do you remember further that you stated: "The reason is that he can rely upon that film company to

govern the number of ads that are placed on his screen to eliminate more than one company calling on the same account in an effort to sell that screen"?

A. Yes, sir.

[700] Q. But you think now that you ever told him or anyone else that an exclusive contract was not

necessary in your business.

A. I don't believe I would word that question by saying that they were not necessary in my business because in 1944 they were necessary in my business and I had exclusive contracts, so I couldn't very well tell Mr. Van Wagoner otherwise, unless I was nuts.

ARTHUR EDWARD Fox was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

- [701] Q. (By Mr. Burgess:) Will you state your full name?
  - A. Arthur Edward Fox.
  - Q. Where do you live?
  - A. I live at 3942 Cedar Avenue South.
  - Q. St. Paul, Minnesota?
  - A. Minneapolis.
  - Q. Minneapolis, Minnesota.
  - A. Yes.

Trial Examiner KOLB: Has Mr. Fox testified before or was he here and not called?

Mr. Burgess: He was here and not called.

Q. (By Mr. BURGESS:) And what business are you engaged in, Mr. Fox?

A. I am a representative for the Alexander Film

Company.

- Q. How long have you been a representative for them?
  - A. Very nearly four years.
  - Q. By representative, is that the same as salesman?
- A. Salesman.

  Q. Before working for them had you been engaged

in the film ad business?

A. Yes, I had.

Q. For how long?

A. I was with Mr. Dougherty—as close as I can come, I think about sixteen months—sixteen or eighteen months. And then I left him and I went into partnership with another man. His name was Andre Pinet. I was with him maybe about eight months.

Q. While you were with Mr. Dougherty did you act as saleman, contacting theatres and prospective adver-

tisers?

A. Yes, sir.

Q. From whom did Mr. Dougherty obtain his film at that time?

A. Parrott, down in Des Moines, Iowa.

Q. And it was the Parrott Film that you were selling to the advertisers and showing on the theatre screens?

A. Yes, sir.

Q. You were with Mr. Dougherty, you say, about sixteen months.

A. Yes, sir, approximately that.

Q. And during what years was that, Mr. Fox?

A. I think that was in 1941 and '42.

[703] Q. (By Mr. Burgess:) Will you explain what type of films the Farrott film was that you were using at that time?

[704] A. Well, its photography, for one thing, was

very poor. The characters-

Mr. Collins: (Interposing) I want to object. I understood counsel asked for the type of film and not the quality of the film.

Mr. Burgess: All right, I will include quality in the

question.

Mr. COLLINS: Well I object to it.

Trial Examiner KOLB: Objection will be overruled.

Let's get finished.

The WITNESS: They were shorter. They didn't live up to the standard length that our competitors had and they were old films. They were films that had been produced—well, like Mr. Dougherty says, three or four

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years ago. To me it was more like twenty years ago. We did have quite a bit of success in selling them but after the advertisers got to see them, why, they were very much disappointed and we had quite a bit of difficulty keeping our accounts and our renewal business was—there just wasn't any. That was one of the disappointments I had while I was with—it was no fault of Mr. Dougherty's, it was just the quality of the product he had to sell.

O (By Mr. Burgess:) Now, they were a very old film

you were trying to distribute.

"A. Very old, yes, sir.

[705] Q. Did you lose business? A. Yes, sir.

Q. Did you have complaints from your advertising customers?

A. Yes, sir.

Q. And you lost advertisers?

A. Yes, sir.

Q. Did you have complaints from the theatres?

A. The theatres also, yes.

Q. And did you lose theatres because of the film?

A. Well, some.

Q. Now, was that true all the time you were with

Mr. Dougherty?

A. Well, yes it was just a discouraging thing. You just kept plugging along but you just had an inferior product that you were trying your best to sell.

Q. Now, after you were with Mr. Dougherty for about sixteen months you went into partnership with

Mr. Pinet?

A. Yes.

Q. That is Andre Pinet that had in conjunction with you an advertising film company here in this area?

A. Yes, sir.

Q. And how long were you with him?

A. I was with him I think about eight or nine months.

Q. Was he at that time just starting the [706] film advertising business for himself with you?

A. He had been associated with Mr. Dough-

but they severed their connections and he went out here and at Mendota where he lives—and talked me into going in with him on this little company. We called it the Co-operative Film Company. He made me a partner. We were both to go out and sell and acquire whatever theatres we could and split our profits.

Q. That was the first time Mr. Pinet had been in

the business for himself?

A. I think so, yes.

Q. While you were with Mr. Pinet what advertising film did you use?

A. We had to use the Parrott film.

Q. And it was the same sort of library film that you had been obtaining while you were with Mr. Dougherty.

A. Yes, sir, Lthink it was.

Q. What was the reaction of your advertising customers to that film that you used while you were with Mr. Pinet?

A. Well, it was practically the same. I run into the same thing, condition, that I would when I was with Mr. Dougherty. Although I was erating in a different section when I was with Mr. Pinet. I was out in the rural area: these little towns aren't quite as fussy as they would be here in town, so I didn't get quite so

many kicks, but it was discouraging. It was

[707] very discouraging.

Q. Did you get much renewal business from the advertising?

A. No, sir.

Q. Did you get complaints from the theatres?

A. Yes, sir, I did. Lots of it.

Q. Did you have any difficulty in holding those theatres as customers?

A. No-I just couldn't hold them. Unless I was

able to get a different product.

Q. Now, you left Mr. Pinet after you had been with him about six or eight months.

A. Yes, sir.

Q. And was it at that time that you went with the Alexander Film Company?

A. Yes, sir, I was real disappointed and I knew there was a wonderful field for this type of advertising. I wrote to the Alexander Film Company and told them what I was doing, what I was trying to do, and asked them if they had some opening in this territory.

Q. A: how long have you been with them now?

A. It will be four years this coming April, April 15th.

Q. And you have been engaged in the same type of work as you were while you were with Mr. Pinet and Mr. Dougherty?

A. Yes, sir.

Q. Has there been any improvement in your [708] ability to obtain contracts with advertisers?

A. As big a difference as day and night.

Q. Now, will you explain that just a little bit. That

doesn't tell us much on the record.

- A. Well, I've got the best quality merchandise on the market to sell and when a man has that feeling, why, it's a lot better than the kind of going—walking backwards into a store before you got nerve enough to get him and tell him what you got. You haven't got anything to show him in the first place. But when I carry an Alexander kit I got my beautiful colors and I got a nice library, it don't matter who I am talking to, why, I have a film available for him.
- Q. Have you been able to build up the number of your advertising customers?

A. Oh, yes. Yes, I have

Q. Have you been able to build up the number of theatres with whom you have contracts for the Alexander Film Company?

A. Well, I have shown an improvement in my territory. I have more houses now that I am selling than

when I first started-more theatres, I mean.

Mr. Burgess: I think that's all.

[716] Trial Examiner Kolb: Mr. Fox, just a minute. When you speak of old films of the Parrott Company, you have reference to the old subject matter or the condition of the film itself?

The WITNESS: Well, for one thing the condition of the film itself was very poor. After a film becomes a year old it becomes brittle, becomes a fire hazard, so in making our splices, putting our name trailer to the playlet, that was one of the things we had trouble with. It wouldn't stay. It would clog up in the machines, Then, too, there would be such old characters. My God, suits that we wore years ago. It was laughable. And then the shortage—the playlet, like Mr. Dougherty in his testimony said, the playlets were just half of the ordinary—half of what the ordinary playlet should be. That was the number three that we had.

Trial Examiner KOLB: That's all.

G. RALPH BRANTON was thereupon called as 7181 a witness for the respondent and, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION

- (By Mr. Cozad:) Would you state your name, Mr. Branton, please?
  - A. G. Ralph Branton. Q. Where up you.
    A. Des Moines, Iowa. Where do you live?

With what company or companies are you connected at the present time?

I am connected with Tri-State Theatres Corpora-

tion only.

Q. And what business is the Tri-State Thea-[719] ters Corporation engaged in?

A. We own and manage picture theatres.

- And in what State or States? Iowa, Nebraska, and Illinois.
- And can you tell us approximately the number of theatres within that chain, Mr. Branton?

Approximately 57.

What is your official title or capacity with the Company?

A. General manager.

Q. And how long have you occupied that position?

A. Since 1933.

Q. As general manager of the Tri-State Theaters Corporation, do you have charge of all advertising, screen advertising, that is placed on your screens?

A. Yes.

[721] Q. What is the underlying reason, Mr. Branton, for Tri-State Theaters Corporation having screen advertising?

A. Pure and simple money only, the income from

the screen.

Q. In other words, that constitutes and supplements your regular box office income?

A. Yes: it adds to our income.

Q. Do you consider, and have you found, that screen advertising handled by one film advertising distributor has proven to be satisfactory?

Mr. CLLINS: I want to object to that, Mr. Examiner.
Trial Examiner Kolb: The objection will be overruled.

The WITNESS: Would you repeat the question?

(The reporter read the question.)

A. Well, it is satisfactory as screen advertising can possibly be.

•Q. (By Mr. Cozad:) And what are the reasons for

that conclusion, Mr. Branton?

A. Well, I made up my mind for Tri-State Theaters the only way we could continue to run screen advertising was to make a firm guaranteed deal whereby we would get a sustantial sum of money from whoever ran our screen ads and be assured of a definite income and

have a definite control on the number of ads we ran and the type of ads we ran, and from that standpoint our present arrangement is sat-

isfactory.

It is the only way that I could have full control over it and know that we were going to get a specified income sufficient to warrant the running of ads at all.

[724] Q. Have you exhausted the possibilities of determining whether or not that guaranteed income would be forthcoming if you dealt with any num-

ber of screen advertising distributors?

A. Well, frankly, it didn't seem there was [725] anybody very vitally interested in our screen advertising except Mr. Hendren. We have come to the conclusion a long time ago that unless we could get a substantial sum of money we were not further interested in running screen advertising, and he was the only one, or his company, that met that condition, and I don't believe from my experience that it is possible to have more than one company handling the advertising for a group of theaters as compact as ours. It could not possibly return the revenue that we demand.

Q. (By Mr. Cozad:) Expand the reasons for your conclusion, Mr. Branton; that is, why wouldn't any number of film advertising distributors produce for Tri-States as much revenue as one film advertising dis-

tributor?

A. Well, first, we set out the amount of money per year that we want returned from the number of theater screens which we permit to run theater advertising. Second, we outline the maximum number of screen ads which we will permit on the various screens and that varies as per the theater.

Then we say regardless of what you sell, we expect this amount of dollars per year, and we figure that almost to the maximum. Therefore, it is reasonable to understand that if a man didn't have the sole right to.

solicit for that total number that he couldn't

[726] return me the maximum amount.

Q. All right, Mr. Branton, you stated in [727] answer to my previous question that you very definitely limit the number of screening spaces or screening time with respect to film advertising. State what, from your experience as a manager of a-

A. General manager.

Q. —general manager of a theater chain, film advertising does so far as your audience reaction is concerned:

A. You are asking for the audience reaction to screen advertising?

Q. Too much screen advertising.

A. Well, first, I don't believe the audience likes any screen advertising; second, we certainly know that if we would give them more than just an amount which doesn't actually offend that we would lose customers.

Q. What is your experience with respect to the number of ads as a general over-all picture

of all theaters, that you must not exceed?

A. Well, of course, that varies. I don't want to get into any argumentative situation here again. The different types of ads make a very great difference. If they are cheap little ads, two is too many. If they are good, clean advertising with good backgrounds and good music accompanying them, we consider that, in a certain class of house, up to five won't offend.

Q. Translate that into time, Mr. Branton.

A. Oh, a minute or a minute and a half to 2 minutes would be top.

Mr. Cozap: I believe that is all.

# [729] CROSS-EXAMINATION.

Q. (By Mr. COLLINS:) You find the reaction of the public, though, they are against all screen adver-

tising, aren't they, Mr. Branton?

A. Well, let me explain now without trying— I started out personally by being prejudiced against screen advertising. Therefore, I look upon the public as resenting screen advertising if it isn't handled very delicately and very cleverly and very quickly—

Q. You are just-

[730] Mr. Cozad: Just a minute. Had you finished your answer?

A. (continuing) — because we have had reaction in our various theaters over the years wherever we get to a greater length of advertising I have talked about here we get a violent reaction.

[737] Q. Do you mean that the proposition that the United has made to you, that the same proposition would not be profitable to other screen distributors?

A. It couldn't possibly be. It couldn't possibly be. They have to maintain an organization to sell film, and they can't do it with a spasmodic arrangement or a partial arrangement in some given town. It is just plain arithmetic.

[741] Myron Blank was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

## DIRECT EXAMINATION.

- Q. (By Mr. Cozad:) Will you state your name, please, Mr. Blank?
  - A. Myron Blank.
  - Q. Where do you live? .
  - A. Des Moines, Iowa.
- Q. With what company or companies are you connected or associated at the present time, Mr. Blank?
- A. I am general manager of the Central States Theaters and secretary of that and Tri State Theaters Corporation.
- Q. How long have you occupied the position of general manager of Central States?
  - A. Since January 1, 1947.
- Q. And as general manager, are you charged with the responsibility of determining whether to have screen advertising, and if so, how much and from what [742] company or companies?

A. That is my responsibility.

- Q. Mr. Blank, in your experience in the theater business, presently as general manager and your previous connections with theaters, have you found that it is necessary or advisable to limit the number of screen ads that are displayed upon the screens) of the theaters of Central States?
  - A. Definitely; yes.
- Q. What is the primary reason or objective of Central States having any screen advertising?

A. I am sorry. I don't have that question.

Q. I will reword it. I think it was a little long and

involved. What is the primary purpose or object in screen advertising so far as Central States chain is concerned?

A. I think we have two definite reasons. First and primarily is revenue to the theater. Second, because Central States theaters are mainly operated in small communities we believe it is a service to the local merchants due to the fact that there are no radio stations, generally weekly newspapers, and that our patron's attention can be reached better by screen advertising than perhaps any other medium, and therefore, the merchants are given a service of advertising that would not be available to them if it hadn't been for the screens.

Q. Notwithstanding the second reason which you have just given, Mr. Blank, have you or have you not found it necessary and advisable to very strictly and [743] stringently limit the number of screen ads that you display on your individual screens?

A. May I answer that in a broader way than you asked the question. Yes; it is necessary to limit our ads. Experience has taught us to. The theaters that we operate consist mainly of partnerships where we have only an interest in the theater with a local manager retaining an interest.

In Mason City, Iowa, the local manager not only retains the interest in the operation and partnership with us, but also retained for his wife all privileges of screen advertising. She, I believe, was buying ads from anybody and everybody because that was revenue that went into her personal pocket. The result in Mason City, because of that policy, was that the city council passed an ordinance, three readings in one night, prohibiting screen advertising in the theater. The ordinance was never published because we immediately moved in and wanted to know why they were taking such drastic steps, and they explained that—

Mr. COLLINS: Mr. Examiner, I submit that is a little

Trial Examiner KOLB: I think the conversation with the city council probably would be hearsay. The ob-

jection is sustained as to that portion.

Q. (By Mr. Cozad:) Your conclusion, Mr.

[744] Blank, is, as I understand it, that unlimited screen advertising, if carried to extremes, creates a very bad and adverse audience reaction?

A. It definitely creates a bad, adverse reaction. Secondly, it ends up giving the advertiser very little for his money because there is a confusion with too many ads, and third, we can only sell playing time in our theaters, and if you multiply screen advertising by the number of shows per day you are going to run into a tremendous amount of free operation of your theaters.

For example, if you were to run 5 minutes of advertising and you have five shows a day, that means your schedule is taken up 25 minutes by screen advertising and therefore reduces the turn-over in your theater.

[753] W. R. ARNOT was thereupon called as a witness for the respondent, and, having been first duly sworn, testified as follows:

# DIRECT EXAMINATION.

- Q. (By Mr. Cozad:) Will you state your name, please, Mr. Arndt?
  - A. W. R. Arndt.
  - Q. Where do you live, Mr. Arndt?
- A. Ruthven, Iowa.
  - Q. That is R-u-t-h-v-e-n?
  - A. Right.
  - Q. And how long have you lived there?.
  - A. Since /1932.
- Q. Are you presently engaged in the ownership and operation of a motion picture theater?
  - A. I am.
  - Q. Where is that theater located?
  - A. At Ruthven, Iowa.
- Q: Have you ever operated and owned a theater in any other locality?
  - A. At Everly, Iowa.
  - Q. That is E-v-e-r-l-y?

A. E-v-e-r-l-y.

Q. State when you owned and operated the [754] theater at Everly, Iowa.

A. November 1, 1945, and sold it March 1,

1948.

Q. In your operation at Everly, did you ever show film advertising, Mr. Arndt?

A. Yes, sir; I did.

Q. Whose film advertising did you show there?

A. When I bought the house in November, I was handling Ray-Bell from St. Paul, and there was oh, I would say 3 or 4 months later, I handled S & M—S & F. or S & M.

Q. Is that Joe Meyer's service out of Omaha?

A. I imagine it is. I don't recall the salesman's name, but it was S & M that I had.

[764] Q. Mr. Arndt, in your experience have you found it more satisfactory and more profitable to do business with one film advertising distributor?

Mr. COLLINS: I want to object to that.

Trial Examiner KOLB: The objection will be overruled, subject to a motion to strike.

[765] Q. (By Mr. Cozad:) You may answer.

A. Well, I like to run-

Q. The question is: Have you found it more satisfactory and profitable?

A. Absolutely.

Q. What are your reasons?

A. Well, when I operated at Everly I had United Film, S & M, and United, all three.

Q. You stated United in the first place. U ited,

S & M, and who else?

A. Ray-Bell. At that particular time I felt that I was running too many ads so I cut them down, and when the contracts expired with Ray-Bell I went exclusive with United Film. Consequently, when I opened my new house I made up my mind that I was going to go with one film company only.

Q. What are your reasons for going with one film

company only?

A. My reasons are that I didn't want my screen cluttered up with everybody's ad, and I wanted them to run harmoniously. I didn't want this type of film that S & M sells. It is hard for me to explain the difference between the S & M ad and United Film ad. In other words, one is a talkie and the other is more or less a silent affair. They will show some baby chicks

for a produce house and put the person's name underneath and it is on and it is off. With

United Film, they run for 40 or 50 seconds and they give what you pay for.

Q. Now, Mr. Arndt, you were present when the other two gentlemen, Mr. Blank and Mr. Branton, testified?

A. I was.

Q. And you, I take it, are an individual theater operator as distinguished from those two gentlemen who are the general managers of theater chains. What is the fundamental, underlying reason why you have film

advertising?

A. To make money. My revenue on my film advertising will amount to approximately \$500 a year. That is the main reason that I have advertising. The second reason is that I think it is good advertising for the local people that patronize your show—if you don't have too many ads. Another reason is that people look for ads to a certain extent when they go into a theater, and I believe that every theater should at least advertise 3 or 4 or 5 minutes per show.

Q. Are you of the opinion, Mr. Arndt, that there is a certain maximum advertising time that a theater

can show upon its screens?

A. Absolutely.

Q. In other words, that there is a limited space?

A. Absolutely. If you have too many ads, it takes too much of your running time.

Q. What is the result if you have too many

[767] ads; what happens?

A. Well, yeu are filling your house, and just as Mr. Blank stated, he runs five shows a day and 5

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minutes for each show is 25 minutes a day. I don't run five shows because I am not in that kind of a situation, but I aim to run 5 minutes of ads per show and two shows in the evening gives me 10 minutes of ads.

Q. Would you get any adverse audience reaction if

you ran too many ads?

I believe you would, yes, because people do not like to sit through too much advertising.

Q. The income which you received for the showing of the S & M films was, I believe you stated, \$10.

A. \$10.

· Q. Have you ever received any more?

A. No, sir.

Has your income from film advertising exceeded \$10 since your relationship with United Film Ad Service?

Oh, yes, yes.

Q. In other words, you are principally in the business. for the money, you show film ads for the money derived from the showing of film ads?
A. That is correct.

And your experience has been with one film advertising company that it means more revenue to you? A. Absolutely.

[768] Mr. Cozad: I believe that is all.

775 RALPH S. PRYCE was thereupon called as witness for the Respondent and, having been first duly sworn, testified as follows:

## DIRECT EXAMINATION.

(By Mr. BURGESS:) Will you state your full name?

A. Ralph S. Pryce.

.Q. In what business are you engaged, Mr. Pryce?

A. Salesman.

- Q. For whom?
- Alexander Film Co.
- How long have you been engaged in selling for the Alexander Film Co.

Six years.

Q. It is part of your duties as salesman to contact both theaters and prospective advertisers?

A. It is.

[776] Q. What territory do you cover?

A. Western Iowa and special accounts from Omaha.

[779] Q. When you sign up theatres for contracts, do you attempt to obtain an exclusive agreement with them?

A. Yes, sir, always.

Q. From your experience as a salesman will you state, what your reasons are for attempting to obtain exclusive contracts?

Mr. Collins: I will object to that, Mr. Examiner. Trial Examiner Kolb: The objection will be overruled.

Mr. Burgess: You may answer.

A. There are really a great many reasons, I probably won't think of all of them, why a salesman desires very much to have exclusive or non-competitive screen rights, for the reason that you may offer and practically guar-

antee protection to the advertisers when you sell them a contract for advertising on the theater

screens so that you can avoid placing competitors on the screen the same weeks, and by reason of having exclusive rights on the theater's screen you can keep your advertisers much better satisfied. In fact, in my instance I'm sure it has made it possible for me to continue to renew my advertisers year after year and helped a great deal in building up this territory to where I have now got it developed. Most advertisers want to feel that they have exclusiveness, and they admit when they sign up that that is what gives the screen—

Mr. Collins: Mr. Examiner, I want to object to that.

Trial Examiner Kolb: Limit your answer to your experience, your reasons why you have endeavored to obtain exclusive contracts.

A. It gives me more selling points, more selling pressure; more value to offer the advertisers; I'm able to render better service to the theater owner; I have been able to pay better for screen rentals; it makes advertis-

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ing worth more money to the advertiser.

Q. (By Mr. Burgess:) Do you have theater contracts which are constantly coming up for renewal?

A. Yes.

Q. That is, some of your theaters throughout the territory, the contract is expiring regularly?

A. Yes, I have contracts for a limited time

[781] only.

Q. When the renewal dates of those contracts are coming up, do you find that there is or there is not competition in retaining that theater?

Mr. COLLINS: I am going to object to that.

Trial Examiner Kolb: The objection will be overruled.

A. Yes, we are proceeding and offering more money for rights on the theater screens constantly.

Q. (By Mr. Burgess:) What are the elements which you have to overcome in order to obtain a renewal of

your theater contracts in competition?

A. First the theater owner has to be satisfied he is receiving what he thinks his screen is worth to him. He has to feel you're able to place the number of advertisers on his theater screen that is requisite or possible to make it worthwhile to him to have any advertising service on the screen at all, and it is very necessary to obtain the friendly feelings of your theater owner to secure cooperation in retaining and in securing the full number of advertisers needed.

Q. In other words, the price that you pay to the theater on the amount of business you think you are going to be able to do with him is an important factor?

A. Very important.

Mr. Burgess: I think that's all.

# [782] CROSS EXAMINATION

Q. (By Mr. COLLINS:) Mr. Pryce, do you have any other competitors than the S & M Company?

Q. Will you name some of the other competitors you have in this field?

A. Reed H. Ray, United, and S & M.

Q. Now, have you in your experience ever been able

to secure a contract with a theater which had previously had a contract with the Reed H. Ray Company?

A. Yes.

Q. Have you ever been able to secure a contract with the theater that was doing business with any of the others?

A. Yes.

Q. Would you name some of the others, some of the other concerns that you have been able to obtain a contract with the theaters with which they were doing business?

A. United—You mean contracts with the theaters for placing ads on the theater screen?

Q. Yes.

A. I have taken theaters away from all three of them.

Q. You have taken them away from all three of them?

A. That's right.

Q. Have you lost any?

[783] A. What?

Well, one, that was for other reasons than the

quality of the film, or the quality of the service.

Q. Now, Mr. Pryce, you spoke about your advertising customers, do you yourself contact the advertising customers, that is the stores?

A. Yes.

Q. And you make arrangements with the stores then for showing their ads on the screen?

A. That's right.

Q. Now, Mr. Pryce, could you tell us the approximate length of the contract which you have with the different advertisers, over what term?

A. You mean the period of time?

Q. Yes.

A. One year.

Q. And that is generally the length of contract then that you make with the different advertisers?

A. That's the one we try to make every time, once in a while we have what you call a short term, three months, 13 weeks.

Q. 13 weeks?

A. Yes.

Q. But generally they are for a 12-month period?

A. That's right.

#### [786]

## REDIRECT EXAMINATION

Q. (By Mr. Burgess:) You stated on cross-examination that most of your advertising contracts are for a period of one year?

A. Yes.

Q. Now, when you sign up advertisers for the use of any one particular theater screen, those advertising contracts don't all start at one time and end at one time, do they, for your various advertisers.

A. No, they are scattered throughout the year.

Q. So that you may have one starting in January and another advertising starting his year in February and another one in July?

A. That's right.

Mr. Burgess: That's all.

Trial Examiner Kolb: Any further questions?

Mr. COLLINS: Nothing further.

[787] Q. (By Trial Examiner Kolb:) You stated the contracts were for a limited time, with reference to theaters, what is the length of time of the contract with theaters for screening rights?

A. We usually try to get them for three years, some-

times they run for less.

Q. What percentage would run for three years, and

what for less and what is the less period?

A. That would be a very difficult thing to answer, I would have to guess at the answer. I would say 85% of the contracts I have obtained run over a period of three years. Some run for one year, with the option of two more years written into it, mainly protecting themselves on the rate of rental they can obtain for the use of the screen. That is the object, usually.

Trial Examiner KOLB: That's all.

Q. (By Mr. BURGESS:) You use a regular printed

form of contract for these agreements?

A. Oh, yes.

Q. That contains the three-year clause?

A. That's right, it's a regular form.

Q. There isn't in very many of those in your territory that you change the term of it as stated in the printed form?

A. That's right, the only thing I mentioned, if they think they may be able to get more money for the screen next year or something they didn't want

[788] to sign up for that period of time. The money item is a very important little item in obtaining contracts.

Mr. Burgess: That's all.

ARTHUR H. SUNDE was thereupon called as a witness for the Respondent and, having been first duly sworn testified as follows:

#### DIRECT EXAMINATION

- Q. (By Mr. BURGESS:) Will you state your full name?
  - A. Arthur M. Sunde.
    - Q. That is S-u-n-d-e?

A. That's right.

Q. In what business are you engaged, Mr. Sunde?

Q. And where?

A. Papillion, Nebraska.

Q. You operate that theater yourself at the present time?

A. Yes, sir.

Q. How long have you been at Papillion?

A. We opened August 5 of this year.

Q. Have you been in the theater business in other places prior to opening the theater in Papillion?

A. Two other places.

Q. Where were they?

A. First at Woodward, Iowa, and second at Elma, Iowa.

Q. How long were you at Woodward?

A. About 16 months.

Q. And how long were you at Elma?

A. Eight years.

Q. And were you the operator or manager of the theater at each of those places?

A. That's right.

Q. Do you show screen advertising on the screens of your theater?

A. Yes, sir.

Q. (With what advertising film company do you do business?

A. Alexander Film Company.

Q. Do you place a limitation as to the number of ads which shall be shown on the screens of your theater?

A. Yes.

Q. That is included in your contract with the Alexander Film Company?

A. That was understood, that there would be a limit:

Q. What is the limitation you place as to the number of ads?

A. Four weekly.

Q. Have you ever been approached by Mr. Meyer of S & M Service or any of his salesmen?
A. Yes, I was approached by Mr. Meyer and

one of his salesmen, too.

Q. Was that since you opened your theater at Papil-

A. No, it was both—I'm not sure about the salesman but Mr. Meyer was out some time before I opened, quite a while before I opened.

Q. Did he ask you for the right to show his advertising film on your screens?

A. Yes.

Q. When he was first out there had you contracted with any one for the showing of advertising film?

A. I hadn't contracted, however, I had promised Alexander Film Company's salesman we would keep the screen open for him.

Q. Did you have a conversation with Mr. Meyer at that time about his advertising film?

A. Yes.

Q. Can you state what the substance of that conversation was?

A. Well, he just tried to convince me he could go out and sell a lot of advertising in the town and I told him I wasn't interested in seeing how many ads we could sell in the town. I told him I didn't think I would care for that type of preview or that type of trailer on our screen. He tried to persuade me to go to Bellevue where he had sold and look at some of their trailers. I never

went over, I wasn't interested. He wanted me

[791] to think it over and he was coming back to see me. The salesman did come back and I told him about the same thing, that I didn't care for that type of trailer.

[792] Q. (By Mr. Burgess:) Mr. Sunde, from your experience as a theater operator, what elements do you take into consideration in granting the screening rights to advertising film companies?

A. I feel it is quite necessary to have control of your screen, as to the kind of advertising and the amount of advertising you put on it, both from the standpoint of the satisfaction of the advertisers, and to your audience. I feel that there will be less criticism from the audience if you show them a good quality advertising trailer, and I feel when I granted the right to Alexander to sell film we were selecting what we believed, at least, was the best in the field.

Q. Is the regulation of the type of advertising shown on the screen an element which you take into consider-

ation?

A. Will you read that, please?

(Question read.)

A. Yes, it is.

Q. Would you be interested in doing business with more than one screen advertising company at a time in your theater?

Mr. Collins: I object to that.

Trial Examiner Kolb: The objection will be overruled.

A. No, I wouldn't consider doing business with more than one.

Q. (By Mr. BURGESS:) Will you state why

[793] you wouldn't?

A. Well, there would be too much danger of conflict, doubling up an over-crowding.

Q. Will you explain what you mean by that?

A. I mean if we had two or three salesmen coming into town and selling, we would have two or three filling stations advertising one week and possibly the next week we wouldn't have any. We like to control that so we don't have more than one business of a kind on the screen at one time, that's our main reason for limiting the number show at one time.

Q. All right, what other reason do you have, if any? A. That's about the only reason, the principal rea-

son, at least.

[798] CLARENCE T. RICE was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

## DIRECT EXAMINATION

Q. (By Mr. Cozad:) Will you state your name, Mr. Rice, please?

A. Clarence T. Rice.

Q. Where do you live?

A. 934 Barnett Avenue, Kansas City, Kansas.

In what business are you engaged, Mr. Rice?

A. Savings and Loan business.

Q. What is the name of your company?

A. Anchor Savings and Loan.

Q. Where is it located?

A. 731 Minnesota, Kansas City, Kansas.

[799] Q. What is your title?

A. President, and founder of it.

Q. How long have you been so engaged in that business?

A. Twenty-five years.

Q. Always in Kansas City, Kansas? A. Always in Kansas City, Kansas. Q. Mr. Rice, do you advertise?

A. Yes.

Q. Do you use film advertising?

A. Yes.

Q. Do you presently have a contract with the United Film Service, Inc. for film advertising?

A. Yes, sir.

Q. What is the length of your various contracts for film advertising with United?

A. Fifty-two weeks.

Q. Your contract provides, I presume, Mr. Rice, for the display of a film which you have selected during a given period at given or designated theaters?

A. That is right.

Q. Would you enter into an advertising contract, Mr. Rice, for film, advertising if you did not know at the time you entered into this film advertising contract that theaters and at what times your advertising film would be shown?

[800] A. No, sir.

PAUL L. WILSON, JR. was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION

Q. (By Mr. CozAD:) Will you state your name, Mr. Wilson, please?

A. Paul L. Wilson, Jr.

Q. Where do you live, Mr. Wilson?

A. 4610 West 69th, Mission, Kansas.

Q. What business are you engaged in?
A. In the dress manufacturing business.

Q. What is the name of the company?

A. Gernes Garment Company.

Q. Where is that company located?

A. 2617 Grand Avenue.

Q. In what city?

A. Kansas City, Missouri.

Q. What is your title with the Gernes Garment Company?

A. Vice-President.

Q. Mr. Wilson, as Vice-President of the [801] Gernes Garment Company, do you have charge of the advertising for the company?

A. Yes, I do.

Q. What is the product that you manufacture?

A. Junior dresses:

- Q. Do you have various stores throughout the state of Missouri and other states that handle your particular line of dresses?
  - A. Yes. We sell one store in town.

Q. Do you have a trade name?

A. Gay Gibson is the trade mark.

Q. Does the Gernes Garment Company advertise its product, Mr. Wilson?

A. Yes, it does.

Q. By what media?

A. Well, with fashion magazines, direct mail, movie advertising, mats for newspapers.

Q. Explain what you mean by movie advertising. I mean by that, explain whether you purchase the film and show the film under your name or whether you purchase the film and have a dealer arrangement.

A. These films are produced for us and we supervise the production, and the distribution is handled by the film company, thirteen playlets a year, and those garments, of course, are divided into a certain number of series of films.

Q. Does the contract for those films also provide for the showing of those films at various localities and various theaters?

[802] A. Yes, it does.

Q. Do you make the arrangement directly or do your dealers have anything to do with the arrangement for the showing of the films?

A. The dealers make the arrangement for the show-

ing?

Q. Is this movie program known as a manufacturerdealer program?

A. You mean we sell them and they in turn adver-

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A. By that I mean, Mr. Wilson, that you, for Gernes Garment Company, arrange for the production of the advertising films which you make available to your dealers and your dealers in turn make arrangements for the showing of those films in those theaters?

A. That is correct.

Q. Does the Gernes Carment Company pay the entire cost of production of those films?

A. Yes, we pay the entire cost.

Q. And the making of the prints for the distribution among your dealers?

A. Yes.

Q. How many states do you have dealers in?

A. All states but the New England states.

Q. Do you offer to make this advertising [803] film available to all of your dealers?

A. Yes, we do.

Q. State whether or not, Mr. Wilson, it is of any importance to you as a manufacturer, in entering into a movie advertising program, that you are assured of the availability of screen space throughout a wide area?

A. Well, that aspect of the program is very important. The production of the films is rather expensive and is part of our advertising budget. If course, we couldn't enter into an advertising contract unless we were assured of a potential market and that market would be services, and these films, once produced, would be distributed at one time.

Q: State, Mr. Wilson, whether or not these playlets are grouped to correspond with the particular models that you place in the hands of your dealers during eer-

tain seasons of the year.

A. For example, we have five lines of the year, one of which would be the first spring line which might have fifty dresses in it, and we will manufacture and ship those dresses directly to the stores that are going to sell them. We have three playlets to correspond to this one first spring line. Those films must be shipped and shown in those theaters at the same time we are shipping the first spring line.

Q. In other words, I take it then, that, unless you

could be assured of a wide showing throughout your entire territory of a given number of these playlets, film advertising would be of little or no value to you.

A. That is correct. F8041

State whether or not, Mr. Wilson, it is of any importance in determining whether to spend any part of your advertising budget on film advertising long in advance and to be able to advise your dealer as to what the cost of display of the various films would be.

A. Naturally our dealers are very interested. When movie advertising is discussed we have to know the approximate cost, and in most cases they want to know the exact cost or at least the rate per thousand in a certain movie theater in their town, and occasionally they want it in all theaters or part of the theaters.

What period of time do you contemplate to cover the showing of these thirteen playlets?

They are to be shown throughout the period of

one year.

State whether or not it is then essential that you know at the time of entering into a contract with a film advertising distributor that those thirteen playlets will be shown at definite dates in definite localities throughout the entire year.

A. That is very correct.

And it is likewise essential that you know in advance and may be able to advise your dealer the cost of showing?

That is true:

Q. Does the Gernes Garment Company pay-[805] for the entire cost of production?

We pay for the entire cost of production,

yes.

- Q. Do you pay any portion of the cost of the display? No.
- Q. It is entirely borne by the dealer?

It is entirely borne by the dealer. That has been

a policy of ours for a long time.

Q. Mr. Wilson, is the Gernes Garment Company presently engaged in a movie contract with United Films Ad Service, Inc.?

A. Yes, it is.

Q. How do you assure yourself or assure the Gernes Garment Company that the films, which you would pay for the production of in the making of the prints, would be available for display throughout the entire United States with the exception of the New England States?

A. The United Films Ad Service Company, when we first discussed this, assured us there was space in most of those theaters, that they would attempt to sell this group of movie playlets, distribute them for us and service our accounts, in such a degree we felt we were assured of going ahead with the program and it would be beneficial to both our accounts and to us.

Mr. Cozad: I believe that is all.

## CROSS EXAMINATION

Q. (By Mr. Collins:) Did you make ar[806] rangements with United for the showing of those films for the particular dealers, or did you leave that up to the dealers?

A. If I understand your question correctly, naturally our dealers had to be sold on it first. Since we were not paying any of the cost in the theater, they would have to see their way clear to exhibit movie advertising once they accepted it, and then it was contracted for.

Q. Did the dealers know at the time they were accepting this the number of theaters and places where the advertising would be shown?

A. & Yes, they did.

Q. And that was true within all localities?

A. So far as I know it was, yes, sir. .

Q. And from whom did you get the assurance where these different theaters were located.

A. From my discussions with representatives of the United Film Ad Service.

Q. Did United tell you the cost of the display at the time you were discussing this?

A. They gave us estimates which would be applied to most theaters in the United States, as I understand:

Q. And was that in all localities?

A. Yes, sir. °

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- Q. And did United tell you, at the time you entered into this agreement with United; just what space was available I mean in period of time. Were they able to tell you the months in which the space would be available?
- A. They were able to tell us, in lining this program out, that the screen space was available in practically all localities and that our program would be serviced to our accounts by their sales organization and the distribution would be handled by them, as it has been.
- Q. And that their sales organization would attend, of course, to the selling of your distributors?

A. That is correct.

- Q. So the extent, then, of your understanding or agreement with United was for the production of the films?
- A. The production and distribution of the films, of which the distribution is a very important part.
- Q. Didn't you leave the distribution up to your dealers?
- A. We left the acceptance up to our dealers. Our sales organization was selling this series of films and, of course, the contract was signed by the sales organization or members of the sales organization of United Film, who are our dealers.
- Q And you had to know from your dealers the number that would be interested in the advertising before you had the films produced?

A. Yes, we did.

- Q. Now, you didn't have a different film produced for different localities, did you?
- A. No, we had the same series of films pro-
- Q. So that the films shown here would also be shown in Virginia, Louisiana, Florida and Colorado?
- A. There would be three films shown over a period of two and one-half months; the films shown in the Kansas City theater might not be the same film shown in Lincoln.
- Q. But eventually the film shown in Kansas City

would be shown in Lincoln, and the film shown in Lincoln would be shown in Kansas City?

A. That is right.

Q. But it is not necessary they be run at the same time?

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A. No, except that the schedule is quite complicated

in order to tie in with our shipping schedule.

Q. For what period of time does your contract with United run?

A. It runs a yearly contract, twelve months.

Q. How long have you had a contract with United?

A. One year.

Mr. COLLINS: I believe that is all.

# REDIRECT EXAMINATION

Q. (By Mr. Cozad:) Just one more question, Mr. Wilson. Would you have any objection to stating, if you know offhand, about what the cost is to the Gernes Garment Company for the production of the thirteen

playlets plus the making of the prints for the

[809] various dealers?

A. I can give you a yearly figure and that runs a ound \$10,000. Naturally, in the succeeding years when more accounts are under contract, that cost will rise proportionately.

Mr. Cozad: I believe that is all.

#### RECROSS EXAMINATION

[810] Q. (By Mr. Collins:) Now, Mr. Wilson, in the dress manufacturing field the style changes from season to season, does it not?

A. That is correct.

Q. And for that reason, when you are trying to convey to the public certain styles, it is necessary for you to change the photographs of those dresses from season to season, is it not? That is, when the style changes you have to change photographs?

A. In other words, we have five lines and we may have films to tie in with those dresses, a seasonable

set-up.

Q. And your method of advertising is to show the

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public exactly how the garment will look when purchased, is that right?

A. That is part of the results we hope to gain with the program.

And, of course, as you say, that changes from season to season?

A. That is correct.

# REDIRECT EXAMINATION

(By Mr. Cozad:) These are all live-action films or playlets?

A. Yes, sir, with sound.

Mr. Cozad: That is all.

Q. (By Trial Examiner Kolb:) Mr. Wilson, on cross examination you stated that you had a contract with United for one year. Do you mean that your contract was for a period of one year, or you have done business with them only for one year?

We signed our first contract—I don't remember the exact date of it-for thirteen playlets and, of course, thirteen playlets to us, as broken up in our manufactur-

ing year, is one year.

JOHN G. TURNER was thereupon called as a [814] witness for the respondent and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Will you state your full (By Mr. BURGESS:) name?

A. My name is John G. Turner.

In what business are you engaged? Q.

A. Advertising agency.

How long have you been engaged in the advertising business?

Nearly 16 years, 16 years next January.

Where is your principal place of business?

A. At Chicago, Illinois, 520 North Michigan 815] Avenue.

In connection with your advertising business, Twe you used film advertising?

Yes, sir, we have.

Q. Over how long a period of time have you used film advertising to some extent?

A. We have used t over a period of 14 years.

Q. Could you state approximately how much business you have done in dallars in film advertising during the past 14 years.

A. Oh, I would estimate the figure at about one

million dollars:

Q. When you first started using film advertising,

will you state how you conducted that business?

A. When we first started to use film advertising, we arranged for a local filmer or producer of films to make up a playlet, as we called it, and that was done after we had secured an order from a client to arrange for a campaign in whatever territory we thought we could get for theatre coverage.

We would then take these films, and on the direction of the client, we would attempt to contact theatres to get the film shown at a certain theatre within perhaps a period of a month or two leeway, and our attempts on this basis were carried on with some variations.

We found that that method wasn't very successful, due to the fact that the contacting of the theatre was by mail, and when we would write to a hundred thea-

tres we would have replies perhaps only from

varied this procedure somewhat by having the salesmen of the client go around and call on theatres. We made a little bit more success with that than we did with the mail method, but that again was unsuccessful on the whole, due to the fact that the salesman that went around was employed by the manufacturer and was not fully apprised of all the factors involved in the situation, and we found that the amount of orders or the amount of business placed on the screen for our client was of rather meager nature.

[823] Q. Go ahead.

A. When you are dealing with newspapers and magazines you know exactly what the publishing schedule is, and you give no thought whatsoever to the

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Q, thea fact that your investment in making up a set of plates which is going to run in that magazine or newspaper is

not going to produce what the person ordered.

In the case of screen advertising, we have had the experience of making up a film, or a series of films for the advertiser, and have gotten a very, very poor return due to the fact that we could not make physical use of it, in the results of getting the film shown.

Now when we have a client sold on the use of screen advertising it involves an expenditure of sev-

[824] eral thousand dollars, and he has to have some assurance that these films will be run to the extent of the amount of money that he has put into these, so we have to show him, we have to convince him that the film company we are dealing with has the facilities for running those films in these various areas, and the experience that we have had with this medium has,—the way we are working it now, we have never had any let-down and had as high as thirty or forty thousand dollars invested for a client in the mechanical part of the film business, in other words, his own playlet that he has to have made up in order to carry on his campaign.

Q. Do I understand that the client, the advertiser,

has the films and prints made up at his own cost?

A. Yes, he does.

Q. And after having gone into that, it is necessary for him to be able to have those shown in order to get any benefit from them?

. A. That is correct.

Q. At the present time who makes up the film for your advertisers?

A. At the present time Alexander Film Company.

Q. And your customer pays the cost of the production of the film and the prints?

A. That is right.

Q. And the prints are made up according to the number that may be ordered by the customer for his use, is that right?

A. That is right.

Q. Now, who pays for the display of the film on the theatre screens?

A. The display of the film on the theatre screen is paid for by the dealer, manufacturer, in part, by the distributor, who is the middle man between the manufacturer and dealer, in part, and by the manufacturer in part.

Q. So that the cost of screening is paid partially by the distributor in each community and partially by the

manufacturer?

A. Yes, sir.

Trial Examiner Kolb: Who do you mean by the distributor, distributor of the manufacturer or of the film?

The WITNESS: Of the manufacturer.

Q. . (By Mr. BURGESS:) That is the local dealer of the product?

A. Well, there is a distributor of the product and a

local dealer involved in most cases.

Q. Have you had occasion in recent years, Mr. Turner, to have film produced and prints produced by others, than Alexander, and have them distributed through Alexander?

A. Yes, we have.

Q. Have you had any difficulty with Alexander in obtaining such distribution?

A. No, we have not.

of the film, do you make any arrangement that non-competitive ads are on the screen during the same period of time as your customer's ad is being shown?

A. We wouldn't go into the medium at all if we didn't have some assurance, verbally or otherwise, that there would be an attempt made to keep a competing ad off. It would be rather ridiculous to have four ads on a screen or even two who sold paints or shoes or who sold some other type of a product. Our advertisers prefer to have their message on the screen at the time advertising is being shown to be the sole product of that nature, and we have that thing, it is arranged in such as way that we have no complaints about it.

Q. You do have the arrangement with Alexander in the handling of your film that there will be no competing ad during the time your advertising film is being run?

A. That is right.

Q. And I think you said you would not be interested in running film advertising if there was to be competing ads?

A. No, we wouldn't, that is right.

Q. Have your advertising campaigns, with the use of films, been successful since the time you started dealing with Alexander?

A. They have been very successful.

Q. Have your customers been satisfied with [827] the products and the service?

A. Yes.

[828] Q. After you have selected your theatres, Mr. Turner, is there a lapse of time between that

selection and the process of releasing the film?

A. Yes, there is a considerable lapse of time. There is a normal lapse of time, of getting a decision on the program, and then there is a lapse of time of making up the required playlet that we are going to show to the

movie houses. Sometimes that takes anywhere from sixty days to six months to complete the productions.

Q. They are made up specially for you?

A. They are in each case, and previous to that time we may have to spend a little time in research in order to determine the exact type of presentation that we make with the theatres.

And then, after we have decided on this, there is a lapse of time involved in it, our clients are contacted, and their distributors, who more or less have to fit that plan in with their own expenditure, for the period, or for the coming period, whichever it is going to be, and they, in turn, must be contacted by the salesman of the Alexander Film Company, and be given a listing of the dealers, that could be called on with a rating as to the amount of money, the maximum amount of money that the order could be done with, with the dealer, and from that point on, there is the showing of the film after the order has been secured from the dealer, and has to

be sent to the distributor again for his approval, which may take a couple of weeks.

Then it usually takes about five weeks before the actual screening goes on,—five weeks time which fits in with the program of getting the screenings to take place over a uniform period of time.

From that time on we forget about the thing because the screening is taking place on a frequency basis, whatever the dealer and salesman had worked out to his advantage.

[830] Q. Now, how many playlets are customarily set up for one of your programs for the client?

A. Well, customarily we set it up on a basis of thirteen. That is done because we have to allow for the man who wants to run a playlet each week, or for the man who wants to run it less frequently, but unless we have thirteen, we don't have any variety of playlets to show on the screen. In one case here we are using, I think, twenty-one, because the subject matter dictates that, when there is a choice, but there has to be enough frequency, enough different subjects so as to carry on some kind of an even campaign.

Q. About how long would you say it is from the time your customer decides on a film advertising campaign until that screening of the film ordinarily begins?

A: You mean the manufacturer, or the client?

Q. Yes.

A. Well, when he decides to make that film up he may decide it should just begin when he decides,—if he should decide at the tail end of a selling period, for instance, if the selling period is heavy in the spring, and we should happen to get his decision on it after it is over, that campaign may of course not be set up to screen until the following March.

But if he should wish to get into the campaign very

quickly,-is that what you had in mind?

Q. Yes.

[831] A. Very likely then we can work the thing out, so that it will probably take, well, you have got that period of around two months to six months to get the production. I would say we would hurry it

along, it would still take four to five months before he

would actually have anything run on the screen.

Q. During that original lapse of time, however, the customer has selected the theatre and you must know what the cost of the theatre to the customer is going to be?

A. That is right.

Q. Then how long a period of time does your screen-

ing campaign ordinarily cover?

A. Well, we hope to have it cover as long a period of time as we can: Our goal is to have the dealer run that film every week straight through for a continuous period. In other words, the way it does happen is, we have about, I would say, maybe fifty per cent of the dealers run each week for the period of one year, due to the fact that the contracts are signed, I believe, for the period of a year, the most contracts are of that period, the signing of that for a man who wants to run his advertising,—it will take the period of a year.

Q. Now, ordinarily on your manufacturer-dealer arrangement which you handle, does your original setup

also call for a follow-up campaign?

A. It does. If it doesn't call for a follow-up campaign, it is because the campaign has been

a failure. That is applied to anything. In other words, we have carried this campaign for year after year, because we find they improve business to the dealers as they are carried on. When a dealer is running these films he seldom quits.

Q. And your follow-up campaign would be for the same manufacturer-dealer over another period of a year?

A. That is correct.

[842] MARC J. WOLF was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION

- Q. (By Mr. Cozad:) Will you please state your
  - A. Marc J. Wolf.
  - Q. Where do you live?

A. Indianapolis, Indiana.

Q. In what business are you engaged?

A. Operation of theatres.

Q. Is that operation conducted individually or through your corporate setup?

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A. Our company is the Y and W-Corporation.

Q. Do you have a number of theatres in that territory?

A. We have twenty-seven theatres.

Q. Do any of your theatres do film advertising?

A. Seventeen of the twenty-seven use film advertising.

ing.

- Q. Are you presently under contract with United Film Service in connection with your film advertising?

  A. We are.
- [843] Q. How long have you done business with the United Film Service Company?

A. I believe this is the eighth or ninth year.

Q. Have you determined in the operation of your theatres, Mr. Wolf, that there is a saturation point beyond which it is uneconomic to go in the screening of film advertising?

A. In my opinion you run into a certain amount of audience reaction which is bad if you have too many

ads on the screen at one time.

Q. In your particular theatres where you show film advertising, what, as a general rule, is the number of film ads that you limit during each performance?

A. Always to a maximum of four ads in one showing.

Q. Do you know approximately what four ads would constitute in minutes, length of time that it would take to show four ads?

A. Around two minutes time, two or two minutes

and a half.

Q. What is the paramount reason for having film advertising?

A. There is just one reason, that is the revenue it

produces.

Q. In other words, it constitutes in and supplements the revenue which you would receive in the running of a motion picture theatre?

A. That is correct.
Q. Have you in the past done business with more than one film advertising distributor?

A. Quite some years ago we did business with

more than one, yes, sir.

Q. With how many advertising film distributers did you do business?

A. Two.

Q. You are doing business with only one advertising distributor at the present time?

A. That is right.

Q. What are your reasons for doing business with only one advertising distributor?

Mr. Collins: Mr. Examiner, I want to object to this line of testimony as not being material to the issues in the case.

Trial Examiner KOLB: The objection will be overruled.

A. My reason for wanting to do business with only one advertiser is because it makes the job of keeping track of the revenue you have coming to you much more simple to do business with one concern only, and then there was another reason which prompted us to do business with one advertiser alone, and that was the fact that we didn't want to at one time have more than four ads on our screen, and with more than one sales . force advertising for a particular screen, we found we very often ran into a spot where they had sold, between the two of them, more than four ads, and then it became necessary for us to omit one or two ads, as the

case might be, from one or the other of the two

advertising concerns.

We found that that was distasteful not only to the concerns that had gone out and sold the advertising, but it made for bad feeling from the advertiser himself, who wondered why his ad was omitted while some other ad was run, and it seemed impossible to keep track of the exact dating of various sales, with the result that as I said before, very often we had more than four ads scheduled for screening at one time. doesn't happen with only one advertiser handling it, only one advertising agency handling the advertising,

because they know that no more than four should be scheduled at one time.

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Q. I take it from your testimony then, Mr. Wolf, that irrespective of the form of contract which you had with the film advertising distributor that you would do business with only one film distributor at one time?

A. That is right.

Mr. Cozab: I believe that is all.

Trial Examiner Kolb: You may cross examine.

# CROSS EXAMINATION

Q. (By Mr. Collins:) Mr. Wolf, do you recall taving been interviewed by Mr. Van Waggoner, a representative of the Federal Trade Commission on May 22, 1945?

A. No, I don't. If you could tell me a little bit about

what it was, possibly I could remember.

[846] Q. Well, it was about the screen advertising business. Do you recall having been interviewed by any representative of the Federal Trade Commission at any time?

A. Yes, the name didn't mean anything that you first mentioned. I remember having someone ask me from the Commission if we had an exclusive screen ad contract. I think this was the total extent of it, and I told him we did.

Q. And there has only been one party who has interviewed you,—a representative of the Commission?

A. That is correct.

Q. Now, do you recall having stated to the man who interviewed you that it was because of Mr. Hendren that you carried the advertising—

A. I don't recall having said that, but that is true.

If I was asked that I would have said so, yes.

Q. And do you recall having stated to him, to this representative, on that occasion that it r as only because of this friendship with Mr. Hendren that you carried screen advertising at all?

A. Sir, I can't recall the exact conversation. I doubt if I said that because before I knew Mr. Hendren we had screen advertising. I probably said that screen ad-

vertising was not of great importance to us. It was simply a side line by which we acquired some revenue, But I don't remember the exact statement.

Q. Now, I believe you stated as one of your reasons for limiting your screen advertising business to one distributor was the question of keeping up with the number of ads and the time of showing the different ads.

A. Mainly not so much keeping up, but not exceed-

ing the maximum of four at one time.

Q. Well, Mr. Wolf, would it not be possible for you to inform the representative who was out contacting the advertiser how much space you had available on your

screening?

A. That is a little bit hard to do,—if you will allow me to elaborate a little bit. You see, screen advertising is sold on various types of deals. Some fellows sell an ad that runs once a week or once a month. Some sell ads that run once every two months, and there are a number of different types of contracts sold, and unless we kept a complete bookkeeping system and exchanged these contracts with the other companies constantly, it is almost impossible to avoid conflicts. One salesman doesn't know what the other one sold, and it winds up two or three times a year with more than four ads sold, possibly two or three for that particular week, and all of a sudden we wake up and there would be six ads, and that meant more trouble, not only for us. but for the salesman as far as his advertising was concerned.

Q. Mr. Wolf, at the time you were doing business with more than one distributor, when the distributor would sell an advertiser, wouldn't he inform you of the duration of the contract he had with the advertiser?

A. Oh, yes, when a deal is sold, we are all notified that they have consummate a contract and so forth, with the terms, but getting back to the reason for limiting us to only one concern, it is so much easier if you don't have to worry about two people selling, to know those ads are coming from one source, knowing that you have limited your screen to for ads at one time, you never

will have to worry about being oversold, and you don't have to worry about keeping books. You have a definite setup. You know when they come in and see what ads ran and what ads didn't run, and inasmuch as screen advertising itself is just a side line, not of any major importance, we try to do it the easy way. It is much more simple from our standpoint to have the one source.

Q. And at the present time then, you don't have to

keep any track of the number of films?

A. We don't have to do anything at all in our present setup except to tell our manager that we don't run over four ads which they were told years ago, and sit back and get our payments from the one source when it is due.

Q. You don't even have to tell your manager that

under your contract?

A. Wouldn't have to, no.

Q. And you just sit back and you are paid [849] for four ads whether the ads are run or not,

are you not?

A. No, I don't think that is exactly right. Our basis of payment is calculated on the average number of the ad which is run. I doubt if it is based on the maximum, but it is possible to guarantee the maximum at all times. We would rather take a flat settlement without any of the details that go with the other setup.

Q. You get a stipulated amount whether there are four ads run or whether or not there are two ads run?

A. That is correct.

Q. And that amount does not vary?

A. That is right.

Q. And if you didn't run any ad, you would still get that monthly payment, would you not?

A. That is right.

Q. Now, it is possible, is it not, for the distributor to keep up with the number of ads running on your screen, is it not?

A. You mean for the man who is selling the ads to

know how many of them are sold?

Q. You have a contract with the United, do you not?

A. Yes, sir.

Q. And United keeps up with the number of ads

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shown on your screen, does it not?

A. Yes, sir.

[850] And the length of time? Q.

. A. They all run for the same time.

Q. You say all run about the same length of time?

That is right.

Q. What length of time is that?

A. Between thirty and forty-five seconds.

What I am speaking about is the number of weeks a certain advertisement would be run? How many weeks

would you say is the average length of time?

A. Well, that is a little hard to answer. I have seen contracts that called for showing in twelve consecutive weeks, and I have seen contracts that called for showing once a week, or once a month or every other month, it all depends on what they could sell to their client.

And you are not in a position then to generalize

on that?

A. No, sir, the only thing we are interested in is to. see there are not more than four at one time.

Q. Mr. Wolf, why do you limit the number of ads

to four?

A. In my opinion, people have paid to come to a theatre for entertainment and they resent to a certain extent being subjected to advertising. But if you limit the amount of advertising to a short number of minutes, they become used to it and don't object to it very much, but if you run a lot of ads, which some people do, in my opinion, you are going to lose customers because

they resent being forced to sit and look over a [851] certain amount of advertising, so we have hit on the number of four as being the saturation

point.

Q. Without having the patrons resent it?
A. We are doing that for a number of years.

Q. You figure then that four ads is the extent of punishment that the public will have to pay for the purpose of going to picture shows?

A. That's about it, yes.

Q. How long did you say that you had been dealing with United exclusively?

A. I am not exactly positive, but it is eight or nine

years.

Q. Now, Mr. Wolf, if some other distributor should approach you with reference to displaying advertising films on your screen, what would you do?

A. I would tell him that he couldn't use his ad on

my screen.

Q. You wouldn't show his ad on your screen?

A. Not at the present time, no.

Mr. Collins: I believe that is all.

[852] W. HARDY HENDREN, JR. was thereupon recalled as a witness for the respondent and, having been previously duly sworn, testified further as follows:

# . DIRECT EXAMINATION (Continued)

Q. (By Mr. Cozad:) Mr. Hendren, you have testified before in this proceeding, and if I recall correctly, it was in Colorado Springs?

A. Yes, sir.

Q. You are the president of the United Film Service?

A. Yes.

Q. As I recall your testimony before, Mr. Hendren, you testified that you have exclusive theater screening agreements, the majority of them are for a period of two or three years; is that correct?

A. Yes.

Q. What length of time do four advertising contracts, or your contracts with advertisers, run?

A. Issued for one year.

- Q. Will you explain the relationship between the theatre screening agreement and the advertising contract with respect to the length of time of each con[853] tract?
- A. Well, the relationship can best be explained through an illustration. If for example, we make a contract with a theatre, an exclusive contract with a theatre, and that theatre has prior to the time that we have made the exclusive contract been running film advertising service for some other company, if that

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to sta chase month If you other company has the theatre screen virtually full, and we will say that our rights to start selling on that theatre screen would not start until, for example, January 1st, 1949, and the rights of the other company did not end until December 31, 1948, then for approximately a year, during which time the theatre will be screening out to conclusion, the advertising contract that had been sold by the other film advertising company, there will be any little space in the theatre to sell to edvertisers. So that actually the amount of space that becomes available to us to sell within the limitation of the number of ads that the theatre wishes to run doesn't amount to a great deal until the beginning of the second year of our agreement with the theatre.

Now, in contracting with the theatre, we do so on the basis that revenue is of principal interest to the theatre in running advertising, and in order to demonstrate to the theatre owner, what we believe and what we are prepared to produce for him in revenue, we haven't the opportunity to demonstrate that to [854] him, or to let him enjoy the revenue that we can

produce for him, unless the period of the contract is sufficient to give us an opportunity to put into effect the screening rates that we have arrived at with him, and he feels that he wants the opportunity to see what we can do, and the only way we can have the opportunity is to have a long screening agreement with him, and that is a term of from two to three years.

Q. Now, Mr. Hendren, in connection with your manufacturer-dealer program, is it of any importance in the sale of the manufacturer-dealer program, the length of your exclusive screening agreements with theatres?

A. Yes, it is of importance.

Q. What/importance?

A. Well, from the time that you first begin to talk a manufacturer about a manufacturer-dealer film edvertising program until the time that you are ready to start actually offering his dealers the right to purchase that program for showing in theatres is about six months and sometimes it even runs longer than that. If you did not know that you had a definite exclusive

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contract with the theatre, so that you can offer a period of time contract that ran for two or three years at the time that you were talking to him, you couldn't assure him or give him any assurance that certain theatres would be positively available for his dealers to

[855] use when his program was produced and ready to offer to his dealers, which might be six or nine months from the date that you first started talking

to him.

Q. State whether or not it is a fact, Mr. Hendren, that when you sell the dealers on the showing of the film which has been usually produced by the manufacturer, do all dealers simultaneously and immediately sign contracts for the filming of those advertising films?

No, experience in the handling of manufacturerdealer programs has shown two things, first, that the manufacturer would never enter into the program if you had to say to him that the availability of these theatres would be for one year, and the reason that he wouldn't, would be for the same reason that he doesn't buy any advertising until it is a medium that he can count upon using once he has made the decision to use that medium. He wants to know that he and his dealers will be able to continue to use this medium when they have once started for at least a period of two or three years, so the dealer who normally purchases his campaign is buying it for a year's screening period normally, and the dealer wants to know that he will be able to renew and continue to use the medium after his first vear's contract is over.

We can't, in the case of a manufacturer who has as many as three or four or five thousand dealers, we can't contact all of those dealers simultane-

ously with the release of the program. Experience has shown that it takes time to cover the dealers list, that at first the program is new to the dealers, many of them have heard about it, but they are hesitant about going ahead with it right away. They talk among themselves, and the experience with these programs is that in the first year of the program, the program is on the up-build with the dealers, starting off

usually in a slow way, with a few number of dealers purchasing it the first month, and then gradually accumulating speed for the sale of the service to the fealers, and in many of the programs it takes as much as a full six or nine months to cover a majority of these dealers. Then there are numerous dealers who, when contacted during the first year say, no, that they don't want to go along, but during the course of that year have a chance to discuss the thing and the program with other dealers, and decide that if the program is offered to them the second year they go along and buy.

Q. Now, Mr. Hendren, in selling advertising to the advertising customer, movie advertising, if you please, all of your advertising contracts with all of your advertisers for a given theatre or a given circuit are not entered into at the beginning of your exclusive screen agreements with that theatre or that group of theatres.

is that correct?

A. No, they are not.

[857] Q. Is it not a fact that you may sell and often do sell advertisers each month during an entire year so that you would have twelve separate agreements terminating at twelve separate dates?

A. Yes, sir.

Q. I believe you testified before, but if you haven't, you do show screen advertising for all and any film advertising distributor so long as the product meets the standards required by the theatre and so long as you have available space, is that right?

A. And so long as the length of the film falls within

the limitation of our agreement with the theatre.

Q. Would you give us the names of a few film advertising distributors for whom you have shown advertising films in theatres where you had the exclusive contracts?

A. For the Alexander Film Company, Reid-Ray Industries, the Motion Picture Advertising Service Company, Inc., of New Orleans, A-V Carrier Service Company, the Bilack,—I think they called themselves the World Screen Advertising Company, of Omaha, and others. Offhand, I cannot remember their names.

Q. You have offered, have you not, to show film ads for the S & M Service?

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A. Yes, we did.

[858] \* CROSS-EXAMINATION

[860] Q. Now, when you enter into these contracts with the theatres you often find, do you not, that the entire time is already taken up, taken up with other advertising, don't you, Mr. Hendren?

A. When we enter into, may I hear the question

again, please?

Q. When you contact these different theatres you often find that the time that you contact them for the purpose of trying to enter into a contract with them, that the entire time is being taken up by other advertising, other advertisements, don't you?

A. Yes we find that true.

Q. And in cases of that kind, the theatres won't contract with you unless you agree to run out these other ads, isn't that true?

A. No, it is not true. They don't force us into the position of running out the other ads, Mr. Collins, we ourselves on the contrary, volunteer to do this: For the

reason that we are an industry in which personal

went into a theatre in which some other film advertising company was running, and we have had this happen, Mr. Collins, and we contracted with the theatre for the exclusive right to run on his screen beginning on a certain date, and if then, on that date, we compel the theatre to throw off all the other advertising that had been sold by some other company and force those advertisers to make new contracts with us, we would only leave a bad taste in the mouths of the advertisers and we would have done something to have hurt our business rather than hold our business, and so we always say to the circuit and to the advertiser that any contract that they have in effect with any other film

advertising company, we want them to go ahead and complete them.

Q. So that subject, then, is not brought up by the theatres?

A. Rarely so, sometimes it is, but if the theatre has made an agreement with the other film company, if it has a stipulation with them, a prior stipulation which says that they had agreed to run to conclusion any advertising for them, in that event they would run this agreement to conclusion.

Q Isn't it true that all of the advertisers request a specific length of time for their advertising to run, is not that true?

A. Yes.

[862] Q. And that is done whether the distributor has a contract with the theatre or not, isn't it?

A. Well, Mr. Collins, the distributor, if he had no contract with the theatre, he couldn't very well make a contract with the advertiser in which he was going to agree to furnish film service for a given length of time unless he has some supporting agreement with the theatre.

Q. Yes, and in this case he has some understanding with the theatre, whether it is verbal or written, does he not?

A. Yes.

Q. And then he goes out and tells the advertiser, isn't that the way it is operated?

A. Yes, that is the way it is operated.

'Q. Then he goes out and tells the advertiser, "I will give you that service for a specified length of time"?

A. Yes.

Q. And he wouldn't be in position to do that unless he would have an understanding with the theatre?

A. That is right.

Q. And then is it your experience that the theatres will insist on living up to those understandings, or will they say, "I will enter into a contract with you," and forget about that other understanding?

A. They will say, "I will live up to the understanding."

Q. And it is for the purpose of having the [863] other fellow's advertising screened out, isn't it?

A. It isn't our having to screen it out, it is the theatre screening it out. We are not handling it.

Q. But the theatres are going to live up to their agreements and screen out the advertising?

A. That is right.

Q. And during that time the United is excluded to that extent?

A. For the number of spaces being used for that

screen-out, yes.

Q. Now, Mr. Hendren, would it not be possible for you to ascertain from the theatres the length of time which their screens would be filled with advertising before you entered into a contract with them?

A. Yes, it would be possible for that to be done, Mr. Collins, the theatres would have to get an accurate detailed record from the other advertising film companies the list of advertisers, exactly when each one is terminated, yes, it would be possible to do that.

Q. Would it not be possible for you to begin the date of your agreement when the services of the other com-

panies had been completed-

Trial Examiner Kolb: Pardon me. We will have a recess for a few minutes.

(A short recess was taken.)

[864] Trial Examiner KOLB: On the record.

Mr. Collins: Now, let's see. Let's read the preceding question. I don't remember what it was

The WITNESS: I remember what the last question

was. Do you want me to tell you?

Mr. COLLINS: Yes.

The WITNESS: You had asked me if it would not be possible for us to being the date of our agreement when all of the services of the other film companies had been completed, and the answer to that, Mr. Collins, is this: That all the contracts that the other film companies had for advertising shown on this theatre do not terminate at one time. They terminate and shelve off by degrees,

perhaps after the selling rights of the other company have ended, and they are screening out to conclusion what they have previously sold, perhaps in the first month, maybe the screenings will be filled, maybe in the next month enough customers contracts will have been completed, so that only seven-eighths of the screens are filled, and then the next month, five-sixths, and so on, and it gradually works out, and it takes about a year before all of those contracts are completed.

Now, if we didn't have our contract start so that when the first space on the first theatre became available,—we would be there prepared to go out and sell that space and begin to pay the theatre revenue for it,—.

if we didn't have that arrangement, then there [865] would be a period from six months to a year when nobody would be selling for the theatre, and the theatre wouldn't be getting the benefit of the income that could be done through that additional selling.

Q. Now, do all of your contracts with the advertisers expire on the same dates?

A. No, sir, because they are not sold on the same

Q. And in your experience have you ever had contracts with advertisers that ran beyond the dates of your

contracts with the theatres?

A. It is normal procedure for us to have contracts with the advertisers that run beyond the normal selling rights in our contract with the theatre, but our contract with the theatre provides that they will screen out to completion contracts that we have with the advertisers that have been sold prior to the termination of our selling rights.

Q. So that there would be nothing there to prevent you from screening out any advertising program that you have sold previous to the termination of your contracts?

A. That is right, sir. I do want you to understand that question of filling screen space with advertisers,—that it isn't a case where there are hundreds of advertisers in every town waiting to get on the theatre screen. It is a selling job, and frequently we will make a con-

tract with a theatre or with a circuit and we will use some of our top grade salesmen to get the job [866] done, and it may be that we never will get the cheatre screen or the theatres in the circuit all filled. We are constantly working to keep as much of

filled. We are constantly working to keep as much advertising on that screen or those screens as this theatre exhibitor will permit us.

Q. Up to the limit of your contract?

A. Up to the limit of what he will run.

Mr. COLLINS: I think that is all.

#### REDIRECT EXAMINATION

Q. (By Mr. Cozad:) One question, Mr. Hendren. In screening out to conclusion, advertising films for advertisers after the expiration of your exclusive agreement with the theatre, the theatre completes the screening of those advertising films, United has nothing to do with it, isn't that correct?

A. That is right, the theatre does.

Q. In other words, United's contract with the theatre provides that the theatre will screen to conclusion your films which you have contracted with advertisers to have shown upon that theatre screen?

A. Yes, sir.

Mr. Cozad: I believe that is all.

[870] Trial Examiner Kolb: Now, I would like to go back to national advertising. I thought I knew what national advertising was, but I am confused. Will you define that for me?

The WITNESS: Well, I will try to define national advertising as it is t'ought of in connection with our industry, the motion picture advertising business.

In our business, there are three classifications of business, one is local advertising, which is the advertising we sell to the local merchant, to the local town for screening in local theatres.

The second is what we call our manufacturer-dealer advertising. That is a service where we sell a national manufacturer on producing a series of films that are designed to sell the product he manufactures, and which

product is retailed through dealers. Now, when that series of films have been produced then we go out through our sales staff and contact the dealers and we negotiate agreements with those dealers for the screening of these films in their local theatres. That is a manufacturer-dealer plan and sometimes that dealer is told

that, well, if you order the service for screening our local theatres, the national manufacturer will cooperate with you or participate with you

in the cost of that screening service.

In other words, here is a contract, it calls for so many weeks of showing in a certain theatre, the volume of the contract is going to be, we will say, \$250. Now, the manufacturer has authorized us to tell you that if you think well enough of these films to order them for screening he will pay fifty percent of that bill, you pay the other fifty percent. That is the manufacturer-dealer. The state national program—

Trial Examiner Kolb: Along that line, Mr. Turner testified with reference to the language you have just described whereby the manufacturer induces the dealer

himself to cooperate with the plan?

The WITNESS: They do assist us through the publication of promotion broadsides, dealers' meetings, and so forth, it is must to their advantage to have the dealers match dollars with them for the screening of films that are promoting the manufacturer's product, because by so doing, if they can persuade their dealers to match dollars with them then they will create two dollars for each one dollar that its costs the manufacturer of the product.

Now, the third division is what we call national advertising, and that is where a large national advertising, and that is where a large national advertiser, whose product is distributed, not by franchised dealers, but by many dealers in a town, as for example, Alka-seltzer, that is sold by every drug store in town, the manufacturer will have a series of films produced to advertise his product, and then he will place orders direct with us for the distribution and showing of those films nation-wide, and he will pay us direct.

Trial Examiner Kolb: If your Alka-seltzer manufacturer arranges for a cooperative deal with his local distributors, that then ceases to be a national advertising and becomes manufacturer-dealer advertising?

The WITNESS: Yes...

Trial Examiner Kolb: So it depends upon whether he is cooperating in the advertising, the local dealer?

The WITNESS: Yes, if field contact is necessary by our sales staff with the dealers then it will be a manufacturer-dealer program, but if that field contact is not necessary,—of course there are exceptions, but usually it doesn't carry the name of any local dealer because the manufacturer's film that is advertising his product is sold by many local dealers and not by just one.

Trial Examiner Kolb: That is all.

[873] Trial Examiner Kolb: During the hearings held the past ten days, a number of theatre operators or owners testified with reference to their reasons for dealing with distributors on an exclusive contract basis, and have detailed the practical difficulties which arose unless they dealt with one distributor. Similar testimony has also been introduced by salesmen of screen advertising.

At the time this testimony was offered, objections were made that such testimony was not material to the issue of the case.

The Trial Examiner overruled these objections and permitted the witnesses to answer subject to a motion to strike. At the close of the testimony of each of such witnesses a motion to strike was made by the attorney supporting the complaint, and the Trial Examiner reserved his ruling upon such motions to a later date.

The testimony introduced subject to said motion to strike and statements of counsel in the record indicate that it is the contention of the respondents in connection with their defense of the lack of public interest and the absence of restraint upon trade.

That their contracts with theatres are for limited periods of time covering screening space which they

normally expect to fill during the period covered by their contracts.

That the terms of their contracts are to some extent dictated by practical considerations, economic [874] conditions and demands of theatre owners.

That the contracts executed by them do not in fact restrain trade since the negotiation of contracts from time to time is highly competitive, and even after negotiation competitors are permitted to display advertising where screening space is available.

That the exclusion of competitors where this has oc-

That the exclusion of competitors where this has occurred has to some extent been due to considerations

other than that of an exclusive contract.

In view of these contentions, it is the opinion of the Trial Examiner that testimony dealing with the execution and operation of the contracts should not be cut off at this time. The objections involve the weight of the evidence rather than its admissibility. While some of this evidence is so remote as to have little value in the determination of the issues, yet the decision of the Trial Examiner at this time is not as to the weight, but only as to the admissibility of such evidence.

It is the further opinion of the Trial Examiner that the practical difficulties and economic considerations involved have a bearing upon the nature of the remedy to be applied if the Commission should ultimately decide that corrective action is necessary.

For the reasons above stated the Trial Examiner at this time denies the motions of the attorney supporting the complaint to striks the testimony of Irwin Neygaard, James G. Randgaard, Martin Levedoff, Ralph S. Price, Arthur M. Sunde, G. Ralph Branton, Myron Blank, W. R. Arendt and C. C. Alexander.

Mr. Collins: I take an exception to the ryling of the Trial Examiner.

[878] E. L. SEITZLER was thereupon called as a witness for Respondent and, having been first duly sworn testified is follows:

## DIRECT EXAMINATION.

Q. (By Mr. BURGESS:) In what business are you, Mr. Seitzler?

A. In the jewelry business.

Q. How long have you been in the jewelry business?

A. Twelve and a half years.

Q. During the time you have been engaged in the jewelry business, have you had occasion to use film advertising?

A. Yes, sir.

Q. How long ago did you start film advertising?

A. Approximately three and a half years.

Q. With what organization did you begin your film advertising service?

A. I believe it was the Theatre Publicity Service.

Q. What was the service that you obtained from them?

A. I had them come into the store and make a film of my store, of myself and a few other people, and run it for six months on the screen.

Q. And that was one film that you had made up?

A. Yes, sir.

Q. What was the nature of that film, other than the explanation you have already given of it?

A. Vdon't believe I understand?

Q. Was there any sound tract with that film?

A. No, sir, no sound tract, no color, and the photographer took the movie without giving me sufficient instructions what to do, when he ran it on the screek. I looked like one of these old Hal Roach comedy things. My first appearance in front of the movie, I was at a loss how to act and what to do, and they failed to give me instructions. They rushed the picture through too fast and when it appeared on the screen, it reminded me when I first started to go to the movies, my awkwardness. They should have cautioned me at least a minute or two, I ran out of words, and stood there like I was at a loss what to do, and it didn't make a very good film.

Q. How was it run on the theatre screens, what arrangements?

A. It was run by the week, for a given sum, which I don't remember, I would have to look at the contract to state it definitely, but for a period of six months they used it at various theatres, I really couldn't state that without reading the contract.

Q. Was it used for a week in one theatre, then the same film transferred and used for a week in another theatre?

A. That is correct.

Q. Did you use that service at all after the first film?

A. I decided that when that—I signed a contract to run it for six months, when that was up, I kept my word on the contract, even though I was dissatisfied, and didn't renew it.

Q. So that film you had made by Theatres Service was not satisfactory to you?

A. No, sir, I didn't like it.

Q. Are you using screen advertising now?

A. Yes, I am using Alexander Film Company now.

Q. And is that service satisfactory to you?

A. It surely is, they have more of a professional type of film that looks like a regular film that you see in the movies when you go to see a movie, and the acting in the film is smooth and it is a clear film which is much more attractive and plan than my other one was, and it makes a good impression on the public, it is not so boring. I saw one last night at the Texas Theatre, it is very attractive:

Q. How does the cost to you contain with the price you paid for the film and servicing of the other film?

A. I find it cheaper to buy stock made film, not only in money, but for results produced for a given amount of money.

Q. How long have you used the Alexander

Film Service?

A. Ever since a short time after I had this film made at a price of \$150.00 and didn't like the results, it has been about three years.

Mr. Burgess: That is all.

Mr. COLLINS: Mr. Examiner, I move to strike all the

evidence offered by this witness as not relevant, and immaterial to the issues in question.

Trial Examiner Kolsa The motion will be overruled.

Mr. Burgess: I may state here, in order to keep to the record, I do not believe Mr. Collins would have made the motion had he connected the service here used with Mr. Reichart, who was used in Houston, that was his company. I think the record shows that.

## CROSS EXAMINATION.

Q. (By Mr. Collins.) Mr. Seitzler, those two companies, the Theatre Publicity Service, and the Alexander Film Company are the only two companies that you have anything to do with?

A. I believe I had a very short contract for a Christmas season one year, it seems to me like it was just one or two weeks for special Christmas trade, that was about two or three years ago, I don't remember exactly, it was just a short sketch for Christmas.

Q. The service that you are now getting from the Alexander Film Company, that is the pictures, are not pictures of your place or business?

882] A. No, sir, they are not.

Q. It is just a stock film?

A. That is right, and very attractive.

Q. But it is no more applicable to your place of business than it would be to any other jeweler?

A. No, sir, all jewelry stores are about alike, and one film would be as good for one as it would for another.

Q. Now, Mr. Seitzler, you were speaking about the results that you obtained; now, how did you go about arriving at a comparison of the results?

A. Well, by the customers that came in the store, they sort of ribbed me about my film I had made in the store, and made fun of it, and when I started these other a number of my old friends came in and told me how attractive it was, and how nice it looked, so that influenced me considerably.

Q. How did the number of people who came in and ribbed you as you say, with reference to the first film compare with the number of people who came in and

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complimented you with reference to the second film?

A. Naturally, I would have to guess at that. From time to time people would come in over a period of time. I had more complimenting me on the Alexander, because I ran it longer.

Q. But for the same period of time, how would you

say the number compared?

A. Well, I can remember the ones that

[883] teased me, much plainer, than the other.

Q. They were more numerous, is that right?

A. Not necessarily, it was a little sharper remark

than I got on the other.

Q. What about the purchases obtained? Did those that ribbed you buy less than those that complimented you?

A. Most of these people were personal friends who come in, rather than to buy, in most cases, that I had

known for many years.

Q. So from the standpoint of the financial gain to you, you are not in position to say that there was any

difference, are you?

A. Well, I wouldn't say that for this reason, because I am now spending over \$1,000.00 a year with the Alexander, where I would not have spent a given amount for another home made film, so I naturally say the results were much better.

Q. How much did you spend for the other?

A. I spent \$150.00 to buy it, which I didn't have to pay Alexander, and I paid \$450.00 to run it. I have a contract that will tell exactly, that is the best I remember.

Q. The price of running it was approximately the

same?

A. Yes, but it didn't seem to make as good appearance to the public, it didn't get the results that I desired. I have dropped all other advertising in favor

of the Alexander Film Company advertising.

[884] The Dallas News, the Times Herald, and the Oak Cliff Shopping News, I feel I get more for my money from this film advertising, in my community.

Mr. Collins: That is all.

L. M. RICE was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

Q. (By Mr. BURGESS:) Will you state your full name?

A. Liston McLeod Rice.

Q. Where do you reside, Mr. Rice?

A. In Dallas.

Q. In what business are you engaged?

A. I am a practicing attorney.

Q. How long have you been a practicing attention at torney in Dallas?

A. Since 1921.

Q. Do you specialize in your practice in any particular type of business?

A. I have.

Q. What is that speciality?

A. The speciality for the past—almost exclusively I might say—for the past ten or twelve years, I have represented motion picture theatre exhibitors. Prior to that time, I had a substantial practice in that field, but for the last ten or twelve years, due to various things, it has taken so much of my time that I am now practically exclusively in that field.

Q. Are you, from your practice, familiar with the chain of theatres known as the Robb and Rowley

Theatres?

A. Yes, sir, I have been their general counsel since March 19, 1925.

Q. As their general counsel, since 1925, have you had occasion to become familiar with all angles of the operation of their business?

A. Substantially all, yes.

Q. Are you familiar with the film advertising business as related to their theatres?

A. Yes, sir.

Q. Are you familiar with the problems which the chain has in connection with screen advertising on their

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theatre screens?

A. Yes, I think so.

[886] Q. Has Robb and Rowley shown screen advertising for some period of time?

A. Ever since I have represented them, I believe they had a contract for the circuit, or individual con-

tracts for theatre screen advertising.

Q. Have they, all during that time, had the same screen advertising company showing the film on their screens?

A. No. sir.

Q. When you first represented Robb and Rowley, what company engaged in film advertising showed their

film on the screens of the theatres?

A. When I first began to represent them, it varied. There were a small group of theatres, they only had thirteen or fourteen, they had a contract at that time, I believe with the Alexander Film Company, I am not sure about that, but they began to expand and make further acquisitions throughout Texas, Oklahoma and Arkansas, in various places, associations they made, they generally associated themselves with local exhibitors. They had contracts or methods of operation which sometimes are on a purely local basis, usually slides. Sometimes with an sency which furnished a moving picture trailer. I can't give you the year in which they first made a contract with Alexander Company advertising on the circuit as a whole on all their screens, but it has been quite a long time ago.

Q. For a period of time they did deal on a non-exclusive basis on the theatre screens of the

circuits?

A. Yes, sir, with the various agencies using their screens.

Q. And at this time they are using the Alexander

Film Service exclusively on the entire circuit?

A. They are, but there was a period when they used at least two others on the circuit, as a whole. They didn't renew with Alexander along in the late 20's or early 30's, and made a contract with another agency that was not used. Then a third agency, an individual

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who was promoting an agency secured an agreement with them, but both of these were unsatisfactory for various reasons and finally they returned to Alexander, I don't know how long ago, exactly, I didn't check the records, but somewhere in the middle 30's, they returned to Alexander and have been continuously dealing with them since, on the circuit, as a whole.

Q. Do you recall the names of the other agencies with

whom they did business?

A. The first change was with a motion picture advertising service called MPA, out of New Orleans. Mr. William Johnson was the head of that agency. That contract was made, but was not renewed. Then a man named Horne, as I recall it, I think it was Elmer Horne, was then in Houston, and he had a different angle on the advertising on the screen, concentrating on national advertisers, and he induced my client to make an ar-

rangement with him which was continued for a rather short time, and after they concluded that

contract, a contract was made with Alexander which—not the contract—but the relationship was established with Alexander, in which we have operated, under which we have operated, since then. I can get those dates if you would like.

Q. And the screens of the Robb and Rowley Circuit are now held exclusively by Alexander Film Company

for the showing of screen advertising?

A. Screen advertising, with a few exceptions, such as charitable, or any special advertising which the local theatre wants to put on. They have always cooperated fully in that. For example, while it is an exclusive contract in its terms, recently Mr. Tom Connors, formerly of Metro, undertook national distribution of a special film on tobacco, which in terms conflicted with the Alexander contract, but they cooperated very cheerfully and the film was shown as a short, it was paid for, we derived revenue from it. In local situations we have advertised on the screen, so while it is an exclusive contract, their contract has never stood in the way of anything that would better my client.

Q. From your experience as general counsel, and

your knowledge of the business of your client, what reasons do you have for granting an exclusive contract, exclusive privilege for showing screen advertising on the screens of your theatres?

Mr. Collins: I object to that, Mr. Examiner,

[889] as not being material to the issues.

Trial Examiner Kolb: I believe this man is o competent to give that information, that would come from the man who makes the contract, to determine the policy, would it not?

Mr. Burgess: I will qualify this gentleman further.

Q. As general counsel for the company, is it part of your work to negotiate contracts for Robb and Rowley?

A. Yes.

Q. Has it been your duty as a representative of the company to determine the policy and negotiate the contract for screen advertising on the screens of the theatres?

A. Not determine the policy. I can illustrate it better than I can give a general answer. Going back to MPA, advertising, I sat in on all of those. Not only as to the form of the contract, but the substance and the relationship. The same thing was true with Horne, and the Alexander, I sat in on all of those. As they came up for renewal, I endeavored to adjust the relationship with Alexander to the needs of my client as expressed by the directors and officials of my company.

Q. But over the period of twenty-three years that you have represented Robb and Rowley, you have sat in on directors meetings and assisted them in determining the

policies on all matters?

A. Yes, sir.

Q. And that includes the determination of policy as to screen advertising?

A. Res, sir, it has been the subject of discussion on many occasions, particularly following the unhappy experiences that I referred to.

Q. And you have advised with them on all of these

matters?

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A. I have.

Mr. Burgess: I think that qualifies this man for not

only an expert in his field, but for the knowledge of his client's business.

Mr. COLLINS: I ask that the terms of the contract, the consideration should be, as I understand it, the law would presume, they are set forth in the contract, and for that reason, I don't think the testimony is competent, I surely don't think that it has any bearing on the issues.

Trial Examiner Kolb: I think the reasons why the contract was entered into would be material, but this witness has said that he has attempted to draw up the contract in accordance with the terms, the ideas of his client, and the Alexander Film Company. In other words, he is attempting to bring down into a legal document the ideas which have been arrived at by negotiation between Alexander and his client, prior to the time he gets into it.

Mr. Burgess: No, he says he is in on the negotiations,

and advised with them on it.

[891] With the Alexander Film representatives the process under which they are going to do it and what

pictures they want, or does your client do that?

The WITNESS: It is done in a cooperative sense. Let me illustrate it this way: We had a problem on the circuit of this sort, some of the managers were not only non-cooperative, but rather discouraged screen advertising, failing to give their quota of space occupied, and apparently were partly the cause of that failure; and with the Alexander Film Company, I, personally, worked out a contract under which that theatre had a sort of quota base for it, and the proceeds of the contract on the flat renewal plus any division of excess earnings were prorated among the theatres in accordance with that performance. I didn't act, in other words, for Robb and Rowley, strictly, as general counsel, I am kind of an office boy, I am around there all the time, I do not represent Alexander and I have no particular brief for them, but I am a kind of a curious dick in this business. I don't rely on general counsel, and when I get in trouble, I usually go and get me a lawyer.

Trial Examiner Kolb: I will permit the witness to

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testify. Is there a question pending?

Mr. Burgess: Yes.

Trial Examiner Kolb: Read the question.

(The reporter read the question as follows:

"Question: Have you discussed with the Alexander Film Company representative the process under which they are going to do it and what pictures they want, or does your client do that?")

The WITNESS: It is best to give it as a matter of actual experience. When we changed from Alexander to MPA, we ran into several problems. Alexander had made contracts with local merchants for a period of time extending beyond the expiration of our contract with Alexander. Those terms had to be subjected to selling our local people. At the same time, MPA was attempting to sell them. Immediately we ran into the problem of selling the competitors advertising. We would not want two jewelry stores or laundries. MPA did cooperate the best they could, but we did have some disturbance there.

Again, we had a disturbance in two respects. Shipments were coming in from MPA to these smaller towns, shipments were coming in from MPA routed to various exhibitors on the circuit, various managers. At the same time they were coming in from Alexander, and that imposes two burdens. One of physical routing of the prints to the projection room, and, two the bookkeeping. The problem of ascertaining what time was consumed and how much space was consumed on the screen, and dividing the time between these two, then the competing agencies in that sense was a rather difficult problem.

It put an undue load upon these local people, and our accounting department. It was a difficult problem. That, plus the possibility of con-

flicting advertising.

We also found that we were getting a varied quality of material. One might not be particularly better than the other, perhaps, but there was a difference. One merchant, for example, would like, perhaps, the other film better. It was a source of harassment to the local managers. We had that experience before with our local

people, who had made private contracts with local merchants advertising slides or otherwise. I remember one department had a contract or some arrangement with an outfit in Kansas City, the name of which I do not recall, and (at the same time they had trade screened that company merchandise—now, the other reason, basically, in my analysis, and the executors of the company regreeded with me, it is important to—

Mr. Collins: Mr. Examiner, I object to this, I understand the witness said at the beginning that he was an attorney, and I hate to keep interrupting, but it appears to me that this is going into the realm of argument, and not stating the specific reasons. I want to object to it for that reason. I still want to object to it for

the further reason it is not competent.

Trial Examiner Kolb: He has testified as to the conflict with MPA and Alexander, is one reason, 894] now, he has started to give a third reason.

with him should be stricken. He is testifying as to his own analysis, and not as to what anybody else thinks.

The WITNESS: I don't mean to be captious, but there never was a lawyer that was a good witness, he wants to argue one way or the other. In my own mind, now, guiding me in my relations with my clients, is this thought; all a theatre man has to offer to the public is time and space. We rent a chair for a period of time, we do not guarantee what is going on the screen, except there will be something there. That is a natural relationship.

Now, when we go to the deal with our screen time, what we do there is merely rent time and space. We rent the screen itself, we rent it for a period of time, for a use, for a certain purpose. Now, that concept, itself, I think, would be—would guide me largely in my advice to my clients about the handling of screen advertising generally. I think those are the principal reasons that occur to me that might be minutia, but I don't know of any at the moment.

Mr. Burgess: How many theatres are there in the Robb and Rowley chain?

A. I think at the present there are, including Little Rock, which is not in the principal circuit, but is privately owned by the heads of the firm, around a hundred and twenty of them, I am not sure, they vary [895] from time to time.

Q. Is the screen advertising business a very

small portion of the business of the theatres?

A. Yes. In the aggregate, it is small, it is a healthy piece of money, but it is not all important, it is relatively small.

Q. Would you be interested in handling the business, of screen advertising with more than one advertising

company at a time?

A. No, we have had that problem.

Q. If it was necessary for you to handle business with more than one advertising screen company at a time, would you handle any screen advertising at all?

A. Oh, we might, if it was just absolutely necessary, but I cannot figure anybody making us rent our screens to anybody we don't want to rent them to, I don't see how anybody could make us take two when we don't want but one. We would take one or the other with or without a contract.

Q. But you were limited, so that it was necessary tor you to do business with more than one, would you do any screen advertising?

Mr. Burgess: I think that is all.

[907] LAFE REHMAN PFEIFER was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

## DIRECT EXAMINATION.

Q. (By Mr. BURGESS:) Where do you reside?

A. 4625 Livingston Avenue, Dallas, Texas.

Q. In what business are you engaged, Mr. Pfeifer?

A. In the advertising business.

Q. Have you had experience in the theatre business and theatre screen advertising?

A. It goes back to 1924.

, Q. Will you give us the history of your experience

with the theatre business and theatre screen advertising business?

A. Well, in 1924, I joined the old and now defunct James P. Simpson Company, their business was screen advertising, and I was with them until 1929, at that time I was labeled vice-president and general salesmanager of the company. They do business much in the same manner as the Alexander Film Company and MPA. James P. Simpson was the first, I 19081 believe, to inaugurate national advertising in the theatres in a big way, having been the first man, to interest General Motors, the Chevrolet Division, in nationally advertising the Chevrolet automobile, and I think that was the beginning of big advertising among national advertising. He died in 1929 and the company dissolved after that, and then I went with the Jamerson Film Company, selling what was known at that time as Jamerson Film mats. We did business on a purely local basis, and without having enough coverage in theatres to really make it big, it soon dissolved, and I went at that time-well, I was still with them at the time I went

Q. What is the Interstate Circuit?

A. The Interstate Circuit is a group of theatres operating in Texas and one theatre in Albuquerque, New Mexico, they have at the present time 153 theatres.

with Interstate Circuit on the 3rd of January, 1936.

Q. How long were you with Interstate?

A. Until 1947.

Q. And what was the nature of your work with Interstate Theatres?

A. Well, I originally joined the company for the purpose of taking charge of their screen advertising department. It was felt they needed, and I sold them on the idea that they needed somebody actively in charge of that department. Well my knowledge of the

of that department. Well, my knowledge of the [909] business at that time was considerable, which I had gained in past experience with other companies, so I joined that company and took charge of their screen advertising department. From that point on, I had full and complete charge of it.

Q. Will you explain what their screen advertising

department was?

A. At the time I took charge of it, they had exclusive screen advertising contracts with the old Elmer Horne company on a guaranteed basis, and that lasted until the contract expired, which was sometime in 1947, the early part of 1947, that contract expired. I think it was on January — one day early in January.

Q. 1947 or 1937?

A. 1937. We then negotiated a contract with the new company known as TAD Theatre Advertising, the initials meant something, I forget just exactly what it was. TAD, and that company sold out, or were taken over by some negotiation, by the Alexander Film Company, and we honored the contract and Alexander then operated in the place of TAD, selling all the advertising in Interstate Theatres.

Q. For what period of time?

A. For the balance of that contract, which I think was originally written for three years. It covered 1937, 1938 and 1939. I would not be positive on that point,

but I believe it was a three-year deal. We [910] then took over—instead of renewing the contract,

we thought we could make money—which after all is the prime objective in running a theatre advertising, by operating the thing ourselves, so, although at the time we had bids from MPA, we decided to create a department completely our own, to do our own selling and take all of the profits that would otherwise have gone to a film advertising company, and this we did, and quite successfully, until we were getting approximately three times more from our screen rentals than we had ever received from a film advertising company.

Q. For what period of time did Interstate engage in film advertising on its own account?

A. From that time until September 13, 1946.

Q. And you were in charge of that department during all that period of time?

A. Yes, sir, completely in charge.

Q. Now, what occurred on September 13, 1946, in relation to film advertising?

A. Well, there had been some discussion for about a year or so as to whether or not it was advisable to continue with screen advertising, so in spite of all the revenue that they were receiving, we decided on that particular day—I recall it very vividly because of the fact that it was a rather crushing blow to me to have

them destroy with one fell swoop, all the work

[911] I had been doing personally for all those years, to build the thing up, but they decided to discontinue completely all screen advertising.

Q. Do you know what reasons they had for coming

to that conclusion?

A. Well, primarily it was because they felt-

Mr. COLLINS: I want to object to that.

Mr. BURGESS: I will withdraw the question and save you the trouble.

Q. Has Interstate engaged in any theatre screen ad-

vertising since September 13, 1946?

A. There is only one instance I know of, that is when they took on the film known as "Tobacco Land," produced by Chesterfield cigarettes.

Q. During the time that they ran their own screen

advertising, where did they obtain their film?

A. Well, mostly we had special productions, for the larger accounts, and for the small towns where we had fewer theatres, where it was not practical to produce a special film because of changes involved, we rented those films from both Alexander and MPA.

Q. So that you had special productions made where

it would warrant the expense?

A. Where you could come out on the production.

Q. Who made those special productions for

[912] you?

A. Most of them were made by Jamerson Film Company, a local film laboratory or studio, whatever you want to call it.

Q. Then for your local advertising film, you obtained

it from Alexander or from MPA?

A. Yes, that is known as Syndicated Service, where the body of the film is applicable to any particular type of business, like a drug store series or garage series, or

bank series, and identify it for the advertiser by simply using the name.

Q. So if you sold a syndicated service for use on the screens of Interstate Theatres, you simply made application to MPA for their film and used that advertising.

A. That is right.
Q. Did you ever have any difficulty obtaining these syndicated films from MPA or Alexander?

A. No, sir, they were both very cooperative.

Q. And that was true during all of the time that Interstate was engaged separately in the advertising business?

A. That is right, we had our own production, sales force; sold it exactly like they were, except we didn't

have the production facilities.

Q. When Interstate was doing business with the various different film advertising companies, all of your films handled on an exclusive contract basis with those film advertising companies?

A. Well, whenever there was any-

Q. I mean prior to the time that they en-9131 gaged in business?

A. Yes, sir, there was only one company operating

at the time, only one selling agency.

Q And you were directly in charge of that work for them?

A. That is right.

Q. What reasons did you have for entering into an exclusive contract with the advertising film agency?

Mr. Collins: We should like to know at what period of time counsel is inquiring about, whether it was Sep-

tember of 1946 or when.

Mr. Burgess: Well, he has testified that they engaged in their own business of film advertising from 1939 to 1946. Prior to that time they had other companies from time to time on the screen, I think perhaps I haven't asked that question.

.Q. Has Interstate Theatres used any screen adver-

tising since September 13, 1946?

A. Well, there was the expiration of the Interstate contract at the time the decision was made to discontinue the advertising I was instructed to get as many cancellations as I possibly could. So I wrote all of the existing clients and asked them for their cancellations, and I had only had about two per cent of cancellation on all of the business then in force, and those contracts

[914] about about June, 1947, was the last contract that was on, the last contract that expired.

Q. And after September 13, 1946, no new contracts were entered into?

A. No.

Q. And no other screen advertising company has been permitted to show any advertising on the screen?

A. They have made no deal with any company.

Q. Now, prior to the Interstate Theatres engaging in screen advertising on its own account, when it was doing business with the other advertising company, did

they do business on an exclusive basis?

A. When I came with the company, they had an exclusive contract which was executed before I came with the company, with the Elmer Horne Film Company, and I think his company's name was Theatre Advertising Service. I believe it was. I think it was known as the Elmer Horne Company. He was the head of the concern at the time, and at the expiration of his contract, as I say, I believe it was that Alexander and MPA and the new company, TAD were all negotiating for, and selling privileges in the theatres, but the contract was awarded to TAD on the basis of the larger guarantee they felt they could make.

Q. So that when the Horne contract expired, there were several different companies who attempted to get

the screening privileges for screen advertising?

A. It was more or less on a bidding basis.

[915] Q. But TAD was the highest bidder and obtained the contract?

A. As I recall it.

Q. And that was an exclusive agreement with TAD upon the expiration of the Horne contract?

A. An exclusive contract, fes.

[950] FORREST DUNLAP was thereupon called as a witness for the respondent and, having been first duly sworn, testified as follows:

## DIRECT EXAMINATION.

Q. (By Mr. Rosen:) Where do you live, Mr. Dunlap?

A. Dallas, Texas.

Q. What is your business?

- A. In the theatre business, and the theatre chain business.
  - Q. Do you own and operate any theatres?

A. Yes, sir.

Q. How many?

A. Well, I have owned and operated sixteen, I don't have quite that many now, small town theatres.

Q. What is the name of your company?

A. Dunlap Theatres.

- Q. How long have you been engaged in the theatre business?
- A. Well, I have been connected with the industry about twenty-five years. I have been operating my own theatres about twelve years.
- Q. So for the past twelve years, you have owned and operated some theatres?

A. Yes, sir.

Q. In small towns?

A. Yes, sir.

[951] Q. As many as sixteen at one time?

A. No, sir, I didn't have sixteen at one time, the most I had at one time was thirteen or fourteen.

Q. Have you ever had any experience in connection with exhibiting motion picture advertising on the screens of your theatres?

A. Oh, yes, yes.

Q. When did that start?

- A. Oh, I was using it back before the sound days, that is ten or twelve years ago.
- Q. When you started out having advertising film on your screen, was the screen contracted to one distributor, or was it open to more than one?

A. No, sir, it was wide open.

Q. What kind of arrangement at that time was made

with the distributors?

A. Well, I set my own price, told them what I wanted; for instance, making a little illustration, Alexander Film was open, MPA, and back in those days, I forget the name of the concern, here in Dallas—

Q. Yes.

A. —I didn't have an exclusive contract with anyone, consequently—may I explain this thing in my own words?

Q. That is what I want you to do.

A. Consequently, maybe MPA said, "We [952] can't go in there and get me so many deals because they are limited to six," they ran about four or four and a half minutes. Alexander would do the same thing, and these other people, so, consequently. I didn't have anything on the screen, not very much.

Q. When you say limited to six, is that six adver-

tisements for each performance?

A. Yes, sir, that is right.

Q. That was the policy of the houses?

A. Yes, sir, that is right, because if you made it too long, it would get tiresome to your patrons.

Q. And would you say in those days you set the price

· of the ads and limited the number of ads?

A. Yes.

Q. And the screen was open to at least the three you mentioned?

A. That is right.

Q. Did that policy prove satisfactory?

A. Very unsatisfactory.

Q. Why?

[954] The WITNESS: I was not getting the revenue on my screens.

[955] Q. Your policy at that time was to permit six ads?

A. That is right.

Q. How many were you getting with that kind of policy?

A. Oh, I was getting about two or three, or four.

this week, maybe next week I wouldn't, maybe I would have too many in there, maybe next week I wouldn't have enough.

Q. Then from week to week, you mean certain weeks

the ads were less than the number you needed?

A. That is right.

Q. And other weeks more than the number you wanted?

A. That is correct.

Q. And that arrangement did not suit you as an exhibitor?

A. No, sir.

Q. As a result of your dissatisfaction of that method of handling advertising, what policies did you adopt three or four years ago.

A. I went with an exclusive contract, had an exclusive contract because they said they would get out and work the territory and get enough ads on my screen.

Q. With whom did you make such a contract?

A. Well, I had a contract one year with Alexander, then I had contracts with MPA:

Q. Who has the contract now?

A. MPA.

Q. How long did those contracts run?

A. One a year, only.

So when you changed your policy from a non-exclusive arrangement to an exclusive, you first gave a contract to Alexander for a year?

A. Yes, Alexander might have had two years, I don't

remember.

Q. One or two years?

A. That is right.

Q. Then you gave a contract, an exclusive arrangement to MPA?

That is right. A.

Q. They still have it? A. Yes.

Q. How long is your present contract?

A. Well, it ends-

Q. For how long a period?

One year at a time, that is, all I had with Alex-

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ander, one year at a time.

Q. What is the arrangement as to the compensation you get as a theatre owner?

A. A per cent.

Q. It is a percentage arrangement?

A. Yes, sir, and I set the prices, what I want for each ad that is on my screen, I tell the film companies, like you or Alexander, what I want, what I think it is worth, then I get a certain percentage of it.

[957] Q. There is no minimum guarantee under the present arrangement?

A. No.

Q. So that you started out about ten years ago with advertising?

A. Yes, sir, ten or twelve years ago.

Q. So, for about seven you ran it on an open basis?

A. That is right.

Q. About three years ago you started to run it on a exclusive basis?

A. Yes, sir.

Q. First with Alexander, now with MPA?

A. Yes, three or four years ago, I don't know exactly.

Q. Has the change of policy proved to be satisfactory to you?

A. Very muchly so.

Q. Why.

A. I get more revenue.

Q. Are there any other reasons?

A. Well, Alexander and MPA fight each year trying to get the film contract from me—

Mr. Collins: Mr. Examiner, I want to object to that as not responsive to the question, and make a motion to strike it.

Mr. Rosen: I believe it is responsive, when he [958] says his reasons, he says he gets more revenue, what he means is since it is competitive between the competitors.

Mr. COLLINS: Well—

Trial Examiner Kolb: You argue the question before I know what the witness is going to say so I can't say whether it is right or wrong, he has testified he got

more revenue, then he was asked the question, and he started to explain-

Mr. COLLINS: Yet us get the reporter to read the

answer.

Trial Examiner Kolb: Read the answer of the witness.

The (reporter read the answer as follows:

"Answer: Well, Alexander and MPA fight each year trying to get the film contract from me—").

Trial Examiner Kolb: You ask for the answer to be

read, is there any remark you want to make?

Mr. Collins: My statements on the record with refer-

ence to the objection I made-

Trial Examiner Kolb: Overrule the objection, the witness will please answer.

Mr. Rosen: Complete your answer?

A. In other words, Alexander comes to me trying to get a contract for the year, or over, and your man comes to me and wants a contract for the year. Because of

the fact that by having one concern handle all of my advertising, I get more advertising on the

screen, so I do not split it up, and if Alexander wants to give me more money than you, or after-I set my price, then I might give it to Alexander. I am not tied to MPA or Alexander either one.

Q. Is there competition between the two to get your

screen?

A. Definitely so.

- Q. As an exhibitor, is it advantageous or disadvantageous to you, where you have fixed advertisements, to have two or more of the same kind of business advertising at any one performance.
- 19607 A. I am trying to answer the question right now, if you had two people, two different concerns, selling advertisements, they might have two drug stores on there, or two grocery stores-what you want is a variety. You like to have a filling station and a drug store, and so forth.

Q. From the standpoint of the exhibitor, you much

prefer a variety?

A. Your clientele prefers a variety.

Q. Your audience, you mean?

A. Yes.

Q. Because you are trying to have an attractive program for the audience?

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A. That is right.

Q. Is it attractive when there are two drug ads or two grocery ads?

A. No, sir.

Q. It is more attractive where there are different kinds of businesses advertising?

A. That is correct.

Q. Where you deal with one company at a time, are you able to control that policy?

A. Definitely so.

[961] Q. Were you able to control that policy when your screen was open to more than one at a time?

A. No

Q. Do you also take into consideration the quality of the film, advertising film, in making up your mind which concern to do business with?

A. Yes, I do.

Q. When you had an open policy, was the quality of all the films displayed equal?

A. No.

Mr. ROSEN: That is all.

[968] J. I. CHRISTIAN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

# DIRECT EXAMINATION

Q. (By Mr. ROSEN:) Mr. Christian, where do you live?

A. Houston, Texas.

Q. How old are you?

A. Thirty-eight years old.

[969] Q. What is your business?

A. I am engaged in the sale of motion picture advertising in theatres, to be exhibited in theatres.

Q. With what company are you now employed?
A. Motion Picture Advertising Service, Inc. of New

Orleans.

Q. How long have you been engaged in the Motion Picture business?

A. I have been engaged in the motion picture adver-

tising business for a little over six years.

Q. When you started in that business, with whom were you connected?

A. I was connected—I started as a salesman for Theatre Publicity Service, July 1, 1942.

Q. Who was the owner of that company?

A. Mr. William Reichart.

Q. Where were his headquarters?

A. Houston.

Q. You were a salesman for that company?

A. I was a salesman.

Q. Was there a gentleman by the name of Mr. Ross-connected with the company about that time, too?

A. He came with the office—he went to work for the

organization in November, 1942.

Q. What were your duties at that time, when you came to work for that company?

A. My duties were to contact various types of business organizations in order to get them a contract for advertising, to exhibit in theatres.

Q. Let me get this first—how long were you connected with that company?

A. Theatre Publicity?

· Q. Yes?

A. Two years.

Q. And then what did you do?

A. And then I went to work for Ross Film Service.

Q. That is the same Mr. Ross who was connected with Mr. Reichart?

A. Yes, sir.

Q. You went to work for him?

A. Yes, sir.

Q. In a similar capacity?

A. Yes, sir.

Q. How long did that go along?

A. About nine months.

Q. And then what happened?

A. And then I organized my own company under the name of Publix Screen Service.

Q. That would be in about 1945?

A. November of 1944.

Q. How long did you operate that company?

[971] A. A little over two years.

Q. And then you started to work in your present capacity?

Yes, sir, for the Motion Picture Advertising Serv-

ice, Inc., in February, 1947.

Q Let us go back a minute; when you started to work as a salesman with Mr. Reichart, did he have any screens to show advertising on?

A. He did, he had theatre screens in theatres in the

Metropolitan District of Houston.

Q. Was he the only distributor showing advertising

on those screens that you spoke of?

A. I can't say, I don't know for sure, he was the largest exhibitor for advertising films at that time, I know that.

Q. What happened to his business?

A. Well, he couldn't give a guarantee to the theatre owners as to the type or quality of product to be exhibited in their theatres, to be a certain standard; also, he couldn't give a guarantee as to the variety of playlets that he could screen in the theatres, and couldn't guarantee to exhibit a certain number of ads for each theatre as he had contracted for; his business began to degrade to a lesser scale on the exhibition of our type of film.

Q. What was the kind of advertising films that he was exhibiting in 1942 and for the time you were with him?

A. Mostly what we call the reader type of service film.

Q. What do you mean by that?

A. Well, a film run on the screen with the name of the business, the address, and a few words on the mer; chandise, the service of the business, on the screen.

Q. It was a still film, no action?

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A. No action, except occasionally maybe a still shot picture on the screen, after the wording had passed off of the screen, or maybe the wording might be superimposed over the still shot picture.

. Q. Did he have any syndicated or library films?

A. Not unless you would count what films he had produced for a certain advertiser, but they were limited, they were still type service films, and might be different types, of two or three different ads, but they were still the same classification, reader type service films.

Q. How about the quality of the films you spoke of Mr. Reichart using, compared with those competitors in

the market at that time?

Mr. COLLINS: Now, Mr. Examiner, I object to that, and submit it is not material to the issues here.

Mr. ROSEN: Mr. Christian was working trying to sell in competition with other companies, Mr. Reichart had taken the stand for the Government, and the burden of the testimony was to try to show that the reason he lost out was because of the exclusive contract the competitors

had Mr. Christian was working for him at the

think there were a variety of reasons which made his business unsuccessful, among which was the inferior quality of the films he was using, which had nothing to do with the question of the theatre screen agreement. We submit Mr. Christian is the best man you could use to prove that. He knows what he had to sell.

Trial Examiner Kolb: The objection will be overruled.

A. When other companies came into the picture, began to selling film advertisements, such companies as Alexander Film Company and Motion Picture Advertising Service, Inc., they exhibited a different kind of film, which produced better results with the advertiser. They exhibited a better type of film, a better type of product, improved variety and type, improved variety of playlets.

Q. What was the reaction of the theatre managers to the quality of the films you were selling for Reichart as compared to these sold by your competitors?

Mr. Collins: I object to that.

Trial Examiner Kolb: The witness is testifying to a difference in type of film and a preference of the theatre people to a difference in type. You are injecting quality in there each time, the witness is not testifying to that.

Mr. ROSEN: Maybe I am missing my point.

[974] Trial Examiner Kolb: You are asking the witness about the quality, he is testifying about the type, so far as he has gone.

Mr. ROSEN: Maybe I am wrong about it, I am using the words synonymously.

- Q. I understand you to say that the type of film and the kind of film Mr. Reichart used was more or less reader?
  - A. Yes, sir.
  - Q. It is a still film?
  - A. That is right.
  - Q. Without any, or very much, action involved in it?

A. No motion picture action.

Q. What were the competitors of Reichart using at the same time?

A. They were using the motion picture playlets, on each program introduced by a title to the program, and then following that were various motion picture action scenes exhibited on the screen, for each scene they had a clarifying announcement, and at the end of the last motion action scene on the screen, then followed the advertisers signature, and his own personal copy, registered merchandise and service, that he was advertising.

Trial Examiner Kolb: You say he had a still picture, now you say at the end of each he had a trailer, did he

have both?

Mr. ROSEN: He is speaking of the competitors.

[975] Trial Examiner Kolb: I beg your pardon?

Mr. Rosen: When you went in to sell the advertising to the advertisers, did they prefer the type of film that was used by your competitor, or the type that Mr. Reichart was using and you were selling or trying to sell?

Mr. Collins: I object to that.

Trial Examiner KOLB: The objection will be overruled.

A. After they learned of the tenure of the playlets that our competitors had to offer, then they preferred our competitors type of film ads, better than the reader ads.

d. What about the theatre managers who were screening these ads, did they prefer the kind you were selling,

or the kind your competitors were selling?

A. They preferred the kind the competitor offered.

Q. As a result of that, did Mr. Reichart lose some of the screens that he had when you first went with him?

A. . He did.

Q. Who got them?

A. The name of the company?

Q. I mean the competitors generally?

A. The competitors generally. To you want me to name them?

Q. All right?

A. Alexander Film Company.

[976] Q. At that time it was mostly Alexander?

A. Yes, sir.

Q. Then in a couple of years, you say you left Mr. Riechart, then Mr. Ross started a business, and you started to work for him?

'A. That is right.

Q. What did he do, go out and get some theatres?

A. He did. Competitors were in the field, then, to

a certain extent.

Q. What was the situation for the nine months you worked with Mr. Ross; I mean, had he adopted a different policy from Mr. Reichart or was he going along the same line?

A. Same line.

Q. With the same quality of film Reichart had had?

A. The same quality of film.

Q. With your competitors having a different quality?

A. That is right.

Q. Did Mr. Ross' business succeed?

A. No, it didn't. At first it was a fair success, later on business began to decline.

Q. You didn't see enough for you in it, and at the

end of nine months you left, is that right?

A. That is right, principally because Mr. Ross didn't have an organization that was aggressive enough to offer me enough opportunity to stay in business with him.

Q. Then you went in business for yourself?

[977] A. Yes, sir.

Q. What sort of an organization did you have?

A. The same type of organization Mr. Reichart and Mr. Ross had.

Q. Were you able to make a go in that type of organization?

Trial Examiner KOLB: You are speaking about the organization of the company or the type of the film?

Mr. Rosen: He went for himself.

Trial Examiner Kolb: I asked, are you speaking about the organization of the company or the type of the film?

Mr. Rosen: I will ask the specific question.

Q. What sort of organization did you have in regard to the sales force, type of film, and screening agreements with theatres, tell us about that, when you went in business for yourself?

A. I had the screening business, I had the theaties.

Q. Were they exclusive to you?

A. No, sir.

Q. Open.

A. Yes.

Q. What sort of films did you use?

A. Still shot film, reader type service films

Q. How many salesmen did you have working for you?

A. I had as many as three.

[978] Q. How long were you in business for your-self, Mr. Christian?

A. A little over two years.

Q. And then was when you went to work in your present position?

A. Yes.

Q. From the standpoint of the salesman, like your-

self, is it possible for him to earn a livelihood if he restricts his activities to the sale of advertising on theatre screens which are non-exclusive, open to competitors—is it possible for him to earn a living doing that?

Mr. Collins: I object to that.

'Trial Examiner Kolb: What does that have to do

with the issues in this case?

Mr. ROSEN: Let me explain what I have in mind. We were here attempting to show that from the point of view of the exhibitor, and the point of view of the distributors and the point of view of the advertising agency, or advertiser, and now from the point of view of the salesman, that the only practical way of operating a motion picture advertising business is to have some exclusive screens, as the backbone of the business, so they will have a market or something to sell, and I think it would effect your conclusions in the matter to show that for the Board. Every person that comes in touch with this industry finds you have to have exclusive theatre screen agreements in order to make a success of it. You cannot get a salesman to go out, and if you cannot have a sales force that can make a commission, I think that that would show the impracticability of running it the other way. I submit it is relevant from that point of view.

Trial Examiner Kolb: I feel I have gone a long way in permitting the economic testimony with reference to the sales force and so forth. I draw the line on whether

a salesman can make a living or not.

Mr. ROSEN: I will state what I expect to show; counsel tenders this witness in order to prove, from his experience as a salesman, it is impracticable for a salesman to work a territory which consists entirely of non-exclusive theatres screening arrangements, and that the backbone of the business is that the distributor must have exclusive agreements in order to furnish a market for the salesmen to sell.

[989] BERT E. GRAETZ was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

### DIRECT EXAMINATION

Q. (By Mr. ROSEN:) Where do you live?

[990] A. Dallas, Texas.

Q. How old are you?

A. I am-I will be sixty-two years old next month.

Q. Mr. Graetz, you are now employed as the District Sales Manager for MPA?

A. Well, my proper title is Divisional Sales Manager.

Q. Divisional Sales Manager?

A. Yes, sir.

Q. For what territory?

A. For Texas, New Mexico and Arizona.

Q. How long have you been employed by MPA?

A. I would say approximately a little better than thirteen years.

Q. Had you been in the motion picture advertising business prior to that time?

A. Yes, sir.

Q. For whom?

A. I was employed by Alexander Film Company for a period of perhaps two or three years.

Q. Where did you start out with MPA?

A. I started as a salesman for MPA in the state of Tennessee.

Q. Just as a salesman?

A. Yes, sir.

Q. Working on a Commission basis?

A. Yes, sir.

[991] Q. Did MPA at that time have any theatre screening agreements with any theatres in Tennessee in the territory you were working?

A. Very few.

Q. What were your duties in Tennessee with regard

to selling?

A. My duties, when I went to Tennessee, were to acquire the screening rights to theatres, then also to sell the advertising to fill those spaces.

Q. Which came first, in the matter of timing?

A. Well, I had to contact the theatre owners before

I could sell any ads.

Q. Why?

A. Because you can't—the salesmen wouldn't go out to sell an ad unless he has a certain commitment and he knows that ad is going to be shown after it is sold.

Q. At the time you started in Tennessee, did MPA have any open screens that it was working which were

under non-exclusive arrangements?

A. Yes, sir.

Q. In those cases, you mean the theatre would show advertising, not only for MPA but also for competitors?

A. Yes, sir.

Q. Were you able to sell advertising to service those screens at that time?

Mr. Collins: I bject to that, Mr. Examiner.

[992] Trial Examiner Kolb: Read the question.

"Question: Were you able to sell advertising to service those screens at that time?")

Mr. Rosen: I mean the open theatres?

Trial Examiner KOLB: The objection is overruled.

A. I sold to some extent, it was quite an effort to

sell them, but I did sell them.

Q. What were the difficulties that you, as a salesman, encountered with regard to selling advertising for theatre screens that were open to more than one distributor?

Mr. COLLINS: I object to that, it is not the issue here. Mr. Rosen: I am just asking the facts within his own knowledge.

Mr. Collins: But the facts do not concern the issue involved.

Trial Examiner Kolb: Overrule the objection. You

may answer the question.

A. For a salesman to work entirely, or practically all theatres, that are non-exclusive, there is too much effort of several different men trying to fill that same screen.

Q. In those cases in Tennessee, were there a limited number of spaces that the theatre would permit all of

the competitors to fill?

A. Yes, sir.

[993] Q. How many of them generally?

A. I would say an average of about, some would run three ads a week, some six, but I would say an average of four ads.

Q. The policy would average about four,

A. About four ads a week, yes.

Q. How did you go from place to place, by auto-

A. By automobile.

Q. When you got to a certain town—when you got to a certain town, how did you go about trying to sell ads to fill these screens where they were open to com-

petitors, what did you do?

A. First, I had to contact the theatre owner, and find out how much available space was open, if he had a record of the advertisers that were sold by other companies, I will take a list of those, then I would try to sell other lines of businesses; however, in a good many cases the theatre man was not available at that time, or was busy with other salesmen buying films or something which was—

Q. You mean feature films?

A. Feature films, and so forth, that I could not afford to take up my entire day waiting on him, so I took a long chance and perhaps went out and sold one or two ads, if possible.

Q. With what results, when you would sell those ads?

A. The results were, in some cases, they were duplications. You had no knowledge when a

competitive ad was going to be shown in the theatre, and very often I would sell an ad to a competitive firm to be shown on the very same week; and either we had to or the theatre man had to notify us, or hold us for the following week, which naturally caused dissatisfaction with the customer as well as the theatre.

Q. All right. Then when you were in Tennessee,

what did you do to cure that situation?

A. I eventually, after a certain length of time, I contacted a large circuit of theatres and signed an exclusive

agreement, acquired exclusive rights for MPA.

Q. What had been their policy before you acquired—I mean—had they shown any advertising?

A. Yes.

Q. On an open basis?

A. No, part of their circuit was on an open basis, and the majority of their circuit was under exclusive agreement to Alexander Film Company.

Q. So they were operating both ways?

A. Yes, sir.

Q. What was the name of the circuit?

A. That was the Crescent Amusement Company, Nashville, Tennessee.

Q. What kind of a contract did you get, then, for the whole circuit?

A. I got an exclusive contract for all of their theatres, which covered the greater portion of Tennessee and a part of Kentucky.

Q. And then what happened with regard to your ability to sell advertising there, and how you serviced

those screens?

A. Well, we were—we were very successful, and we managed to fill all those screens, and brought the business of Tennessee and Kentucky from a very, very small business, up to a very substantial business.

Q. At the time you went into Tennessee, am I to understand that MPA had no exclusive screening rights

in Tennessee with any of the theatres at all?

A. No sir, not to my knowledge.

Q. You mean they didn't have?

A. They had none.

Q. And Alexander did have some?

A. Yes, sir.

Q. And you were able to get some exclusive theatre screening agreements in Tennessee?

A. Yes, sir.

Q. Did you run into competition in connection with

trying to secure those contracts?

A. Yes, sir. There are only two firms, two large firms, I should say, that operated in that particular section, which was Alexander Film Company and MPA,

and, naturally, we were both trying to get—
[996] they were trying to get a quantity and I was
trying to switch it from Alexander to MPA, and
I eventually won out.

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Q. Does that condition still exist today?

A. Yes, sir.

Q. Then what happened to you as an individual, after the Tennessee deal, where did the company put

you?

A. After I made a success, and appointed several different salesmen in Tennessee and Kentucky, they called me to the Home Office and appointed me the Divisional Sales Manager for the present territory that I have charge of.

Q. Texas?

A. Texas, New Mexico, and Arizona.

Q. What business did MPA have in Texas, or when you were appointed Divisional Sales Manager—I am

talking about in regard to theatres?

A. Their business in the State of Texas at the time I took it, they had a very, very small business, I employed one salesman at that time, and he operated, with my assistance, and managed to secure just a little business, that is the only way we could get anything.

Q. Is that the way you built up the business here?

A. Yes, sir.

Q. And the first thing you have to do to build up the business, as I understand, both in Tennessee and Texas,

was to sign up some exclusive contracts?

[997] A. Yes, sir.

Q. When did you say you commenced in Texas, how long ago?

A. Approximately six years ago.

Q. How many salesmen do you now employ under your supervision?

A. Eight.

Q. You started out with one?

A. Yes.

Q. Do you run into any competition in the State of Texas and Arizona and New Mexico in the securing of screen privileges?

A. Yes, sir.

Mr. Collins: I object to that, I would like to interpose this objection. The objection is that the witness should testify as to the facts, and it is up to the Commission to decide whether that constituted competition or not.

Mr. Rosen: That was merely preparatory to my next question. I was going to ask him to illustrate, give me facts.

Trial Examiner Kolb: The objection will be overruled. I think he can say whether or not he had competitors in this territory.

Q. You say you do have competitors in this territory?

A. Yes.

Q. And you have, since you have been in this state?
A. Yes, sir.

[998] Q. Is that equally true of New Mexico and Arizona?

A. Yes, sir.

Q. Who are the competitors?

A. Alexander Film Company is naturally, we consider, our largest competitors.

Q. Any others?

A. But there are other small independent firms that have a few films they might sell to theatres that they can get to run them. If they can have the theatres run them, they are glad to do it.

Q. Was Elmer Horne in business at the time you

first started?

A. No, sir.

Q. He had been, though?

A. Yes, sir, he had been.

Q. Can you give us an illustration, have you recently been able to secure an exclusive contract in Arizona with any theatres for MPA?

A. Yes, sir.

Q. Give us the names of the companies?

A. The Paramount Nace Theatres.

Q. How many theatres do they have?

A. Twenty-seven.

Q. Where do they operate?

A. In the State of Arizona.

Q. With whom did they have a contract until

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[999] recently?

A Alexander Film Company.

Q. With whom do they have a contract now?

A. Motion Picture Advertising Service.

Q. Who got the contract?

A. I did.

Q. When did you get it?

A. Approximately thirty days ago.

Q. How long does that contract run?

A. Two years.

Q. Do you know how long their old contract run with Alexander?

A. Two years at a time.

Q. Are there any others that you can think of that you have obtained in Texas during your six years regime here?

· A. Yes.

Q. Just give us some illustration?

A. Tri-State Theatres, Jefferson Amusement Company.

Q. Excuse me a minute. Do you know about how

many theatres Tri-State operates?

A. Tri-State operates probably eight or ten theatres.

Q. And how many does Jefferson?

A. Around sixty theatres, just about, somewhere close to that, between fifty and sixty.

Q. Any other theatre chains that you have been able

to get?

A. Yes, sir, you are speaking of chains, now?

Q. Yes.

[1000] A. The man who testified here today has a chain.

Q. Mr. Dunlap?

A. Yes, sir, and he recently sold several of his theatres, he has cut his down to very few now.

Q. He said he had about thirteen at one time?

A. Yes, sir.

Q. But he has fewer than that, now?

A. Yes, sir.

Q. Did you get that contract?

A. Yes, sir.

Are there others, like individuals, who have one or two theatres?

A. Yes, sir:

Q. Are all of those we are speaking of signed up on an exclusive basis?

Yes. sir.

Q. With terms running what-one, two, or three vears?

A. Usually one year, two years or three years. Some of them sign up for as much as five years, but in most cases they asked me to reduce it to one or two years, which is all right.

Q. The longest term of any of them is five?

A. I think the longest term.

Q. And the shortest is one year?

A. Yes.

Q. You would say on the average it would 1001] run about two or three?

.A. I would say about two.

Q. Now, in selling advertising, how long do those contracts generally run?

They usually run over a period of twelve months.

Q. You mean when you go in to sell a local advertiser, he would generally sign up for advertising over a twelve months period?

A. In the majority of cases, I would say about twelve months, I have on occasions sold a six months contract, or a shorter period of time, if necessary. Most of them are a year.

Q. Do those contracts sometimes come up for renewal, a follow-up campaign, I mean when the first contract has

run out with the advertiser?

A. Yes.

Q. Is it customary for you to give him a follow-up

campaign?. L

A. We usually contact them, an advertiser, about sixty days prior to the expiration of his contract, and ask him for a renewal. In a good many cases, a big percentage of the cases, they are renewed.

[1010] B. F. WHITE, was thereupon called as a witness for the Respondent, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. ROSEN:) Mr. White, where do you live?

A. Dallas, Texas.

Q. What is your business?

A. I am in the theatre business, booking and operation of theatres.

Q. Do you own any theatres?

A. Yes, sir.

Q. How many?

A. I have a half interest in the Maple Theatre in Dallas.

Q. At the present time, you mean?

A. Yes, sir.

Q. How long have you been engaged in the exhibition end of the business?

A. In this last operation, I have been in it since 1943.

Q. And prior to that?

A. Prior to that, I have been, I guess ten years, in the exhibition, exclusive of booking, which is almost an integral part of it.

Q. Are you the sole owner of the Maple

[1011] Theatre?

A. No, sir, half owner.

Q. But you operate it?

A. Yes, sir, we have a manager out there.

Q. Have you ever done any motion picture advertis-

ing on your screens?

A. Yes, sir, we haven't adopted a policy in the new Maple to start with, but we had in the old one, and later adopted one in this theatre.

Q. How long have you shown advertising in the

Maple Theatre?

A. Something less than a year in this present operation.

Q. Prior to that time, your policy did not permit ad-

vertising on the screen?

A. No advertising other than advertising that you would call as a civic nature, or the type of advertising

that was instructive to the community. We didn't do any commercial advertising up until about a year ago.

Q. In the last year, have you a contract with any

motion picture distributor?

A. Yes, sir.

Q. With whom?

A. MPA.

Q. Under an exclusive basis?

A. I believe so.

Q. They are the only ones that show adver-[1012] tising on your screen?

A. That is right, we haven't contacted any-

body else.

Q. How long does the contract run?

A. I think it is for one year.

- Q. Prior to that time, you say you have been in the exhibition end, how many years altogether, I missed that?
  - A. 1943 to the present date, would be five years.

Q. Then prior to that?

A. Prior to that, I have been in it approximately ten years.

Q. During those ten years, what position did you occupy, did you own theatres?

A. Yes, sir.

Q. Or operate them for others?

A. I operated them or interested in them, sometimes I was manager for others.

Q. During the preceding ten years before 1943, you were in the exhibition field, you either owned it or had a part ownership, or operated it for others?

A. That is correct.

Q. During those ten years, did the screens that you had control over show motion picture advertising?

A. Yes, sir.

Q. On what basis was the advertising shown, was it an open policy or was it only one distributor?

A. It was an open policy, I don't believe we had any exclusive contract in these other theatres

Q. So you have had experience in connection with

having an open policy for Motion Picture advertising, and at the present time you have an exclusive contract with MPA?

A. That is correct.

Q. From the exhibitor's point of view, which is the more advantageous?

Mr. COLLINS: I object to that, it is immaterial.

- Trial Examiner Kolb: The objection will be overruled.

A. I would say that in my present position, I don't know whether the circumstances after it in other situations, but in my present position, I prefer to have it with one firm.

Q. Advertising done through one firm?

Yes, sir. A.

What are the reasons that permit you to answer

the question that way?

In the first place, in the operation of a theatre like I have, we do not deliberately solicit advertising as a source of revenue, it is something that we consider, if we can service the people in our community and still make revenue and not bore our patrons with too much advertising, and we would like to do this with a firm that will understand our position and our needs and take care of those things.

Q. And if you have an open policy, why

[1014] couldn't that result be accomplished?

Well, you would have different people in the community that, more or less are friends of yours that would want advertising here and there, and they would have different kinds of advertising, and there would be conflicts of firms in the same line. In other words, my position is in selecting one firm to take care of my advertising, I can outline to them what I want and they will take care of it, and I know my customers advertising on my screen will also get quality merchandise and good presentation. I would not select the contract with one firm-I pick out one that I think will give my people the best service, also not crowd my screen with a bunch of trailers.

Q. What is your policy, the number of ads you permit to be shown in any one performance?

....We don't want any more than three.

Q. What is the total length of time that they consume?

A. They run about sixty feet at the rate of ninety feet a minute, about two minutes.

Q. Does MPA adhere to that policy?

A. Yes, sir, they do.

Q. Are you satisfied with the quality of film (that is displayed?

A. Yes, sir.

Q. Do they also adhere to your policy of not having conflicts at the same performance between the same form of businesses?

A. Yes, sir.

Q. You also say you have had experience in the past with an open policy?

A. Yes; sir.

Q. In the past, was there also a limit placed upon the number of ads that were permitted by the theatre?

A. Well, we like to limit them, but at times when we were being pressed by individuals, we considered as friends to our theatre and ourselves, a lot of times we would be more or less inclined to ake on advertising we didn't want.

Q. And in that case, did that result, you mean, in

more advertising than you wanted?

A. Yes, sir, it did, and irregular, some weeks you would have none and other weeks you would have six to seven.

Q. In making up your program for a theatre, where there is a repeat performance as there is in motion pictures, isn't it essential that you know the length of time of the whole performance, including the advertising?

A. Yes, sir, we make up schedules and have to adhere

to those.

Q. Two hours or two hours and fifty minutes, whatever it happens to run?

A. That is correct.

Q. So you will have a certain number of performances within a given time?

A. Yes, sir.

A. Yes, sir.
Q. What was the result, when you had the open policy,

about some weeks too few and some weeks there would be too many, in regard to the continuity of the performance?

A. Well, it would disturb your running schedule, of course; furthermore, sometimes you would have too many films, and you can put too much advertising on the screen, it is boresome to the public.

[1017] Q. (By Mr. ROSEN:). Mr. White, in the course of your business in the exhibiting end, are you familiar with the type and quality of film that was distributed by Mr. Reichart, when he was in the distributing business?

A. I don't believe I know Mr. Reichart.

Q. What about Mr. Ross?

A. Yes.

Q. You are?

A. Yes, I remember him, they were not as good films. Mr. Collins: I think I will object to that, now, let him tell the type of films it was, and let it to somebody else to judge whether or not they are just as good.

Mr. ROSEN: Who is going to judge it?

Mr. Collins: I submit that we have just as much right to judge it as you do, and I submit that we have to know what it is before anybody can judge it.

Q. All right, what type of film did Mr. Ross use in

his business?

A. He never used any colored film, it was more or less all tin-type, what we call tin-type production, it was not dressed up.

Q. Did it have any action?

A. It had very little, most of it just flat stuff.

Q. Would you show that type of stuff Mr.

[1018] Ross used, on your screens?

A. We were ferced to, sometime, they would come out there and make deals with local people, we didn't want it.

[1028] SAMUEL B. LANDRUM was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

# DIRECT EXAMINATION

- Q. TBy Mr. ROSEN:) Where do you live, Mr. Landrum?
  - A. I live in Dallas, Texas.

Q. What is your business?

- A. I am in the theatre business, I am with the Jefferson Amusement Company.
  - Q. Are you an officer of the company?

A. Vice-President.

Q. How many theatres does Jefferson Amusement Company own and operate?

A. Some seventy odd.

Q. Where are they located?

- A. They are located in East and Southeast Texas.
- Q. Are you the official of the company who handles the screening of the motion picture advertising on the screens of the Jefferson Amusement Company?

A. I handled it up until the time I moved to Beaumont, I mean, from Beaumont to Dallas, and at the present time, it is handled by myself and Mr. Oakley, the General Manager of the Company.

Q. How long have you been in the theatre business?

A. Since around 1939.

- Q. With whom does Jefferson Amusement Company have a contract to show screen advertising at the present time, and what is the term of the contract?
- A. As I recall, it is three years, I think the expiration date is probably next September, but I am not positive of that date.
  - Q. With whom did MPA negotiate the contract?

A. With me.

- Q. Prior to the time that you entered into that contract, was the Jefferson Amusement Company doing any motion picture advertising?
- A. Immediately prior to, no. We had a contract several years ago with Alexander, and Alexander had taken over from TAD and at the expiration of that contract there was a wartime scarcity of motion picture raw films and Alexander didn't want to renew on the

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basis I wanted to renew with him, so we tried handling our advertising for a short period of time, until the scarcity of raw product and the lack of per[1030] sonnel required us to go out of business, and we didn't have any screen advertising on our screens for approximately two years. Approximately half of that time I was negotiating with Mr. Mabry, he was an MPA representative, for a screen contract, also others.

Q. Can you give us the names?

A. One was a man named Reichart from Houston, also I talked to Alexander, and then a man named Carren from New Orleans.

Q. Commerce Pictures?

A. Yes.

Q. And all of them were trying to secure a contract with your company for motion picture advertising?

A. That is correct.

Q. Have you ever had a policy of having the screens open to more than one distributor at the same time?

A. No, sir,

Q. Why not?

A. Because—

Mr. Collins: I object to that.

Trial Examiner Kolb: The objection will be overruled.

A. It is a matter of convenience to me, I have a certain amount of space to sell on my screen, I have to control the number of ads that go on the screen, in order to balance that program, and I can better do that, it is

more convenient for me to have one person to deal with than several, or an open deal, so to

speak. The merchant who buys screen advertising, may buy it from the representative of some company specializing in that, but as a practical matter, they look to the theatre where their ad is going to show to get performance on the deal they make, so, consequently, we want to know that the person who handles our screen advertising is reliable, and will give those we deal with the kind of service he wants and keep him satisfied, and that can be done better by dealing with one individual

or one company than it can by dealing with an open field. Furthermore, if you have your screens open where anybody who sells screen advertising can sell an ad, then there is no way to control the number of ads going on that screen. I think the contract calls for a limit of 300 or 350 feet.

Now, there is a little additional space permitted where there is a national ad placed upon the screen.

Q. How long a time does 350 feet consume?

A. It is about ninety feet a minute, so you have a little less than four minutes of advertising. We don't have any advertising at all in two of our houses, and you have to keep that cut down because you have to be certain you are getting the quality of screen advertising that should go on the screen—in other words, if you don't, you have a laughable matter for the patrons if

you have some amateur acting on there as a [1032] screen ad, when that does occur we can have

that ad taken off of the screen.

Q. So one of the factors you take into consideration in awarding a contract to MPA is the type and quality

of the films they manufacture?

A. That is one thing; first, I knew they were responsible and they would give me the guarantee I wanted, and they were agreeable to the contract I wanted, after some lengthy negotiation. The contract is exclusive only in this respect, I had them to give Christmas Greeting trailers, which carries the name of any merchants we want to sell. I can carry it sponsored by my newsreels, I can put on specific contracts, which calls for one or two, or maybe more merchant, giveaways, whatever it calls for, I have never had any objection to that. During the recent months, I have run any number of merchants giveaways on our screens. That is merely a method of selling screen advertising under our arrangements, handling that locally.

Q. As to the term of the contract, length of time it runs, was there any negotiation between you and MPA

officials on that point?

A. Yes, sir, I wanted a five year contract and they wanted one year.

Q. Why did you want it longer than one year?

A. Well, you make a one year contract to [1033] begin as of today, for instance, it takes them sometime to get merchants on the screen, and they don't start their ads on the same day. When they start, take over the contract, they started paying me for the screens, and it is difficult to get these things, all these contracts, to expire as of a given date. If the "X" drug-stores ad runs over two or three weeks after the expiration date of the contract, I am certainly not going to have my theatre cut him off and incur his animosity, so a one year's contract is impracticable, it is like making a lease on a building for one year, or an office space. I wanted five years.

Q. Why was it cut down to three?

A. That was a matter of five.

Q. They didn't want it five?

A. No, sir, they wanted it on a one year contract because of the guarantee I was demanding.

Q. You wanted five and they finally agreed to three?

A. Yes, sir.

Q. You feel from your point of view that a one year contract would be impractical?

A. I feel it would be very impractical.

Q. From your experience in handling motion picture advertising on your screen, would you consider a policy of having the screen serviced by more than one distributor at the same time.

Mr. Collins: I want to object to that, because the witness has testified he has had no experience along that line, that the only experience he has had is with the one company policy.

Trial Examiner Kolb: I think he stated he only dealt exclusively, and gave his reasons why. Don't go over the same ground again.

Mr. ROSEN: I will put the question differently.

Q. Would you do any screen-advertising at all if you were required to adopt an open policy?

A. I certainly doubt we would, it would be too hard to control. On an open policy, I am due no guarantee

by anybody that they won't furnish me with any given length of ads, I have so much space to sell, I am like the man with a billboard, I have so much space to sell and I want so much money for it, and if I can deal with the individual and get a guarantee, I feel reasonably certain they are going to do the best they can to fill those screens, and get the best ads they can to maintain their clientele. It assures me a certain amount of money for the space I have, and likewise it insures the merchant to get the best quality of advertising.

Q. Did I understand you to say one of the distributors who tried to get a contract was Mr. Reichart?

A. Yes, sir.

Q. Why didn't you enter into a contract?

[1035] A. Because he wouldn't give me the guarantee I wanted, I didn't feel that he had the facilities to serve the screens.

Mr. Collins: I object to that.

Trial Examiner KOLB: Overrule the objection.

Q. You may finish.

A: I didn't think he had the facilities. I looked at Mr. Currens' product. I didn't think it met the qualifications.

Q. Mr. Currens is the one connected with the Commerce pictures?

A. Yes, sir, he sent some of his samples of his advertising over to Beaumont.

Q. Didn't he have a test run there with you?

A. No, sir, I never put any on the screen for the public to see them.

Q. You mean he exhibited them?

A. He showed them to us on the screen.

Q. And it was subsequent to that time that you entered into a contract with MPA?

A. Yes.

Mr. ROSEN: Just answer Mr. Collins' question, now.

## CROSS EXAMINATION

Q. (By Mr. Collins:) Mr. Landrum, if a distributor

had approached you and asked you how much space you had on your screen, could you not have told [1036] him how much space you had?

A. I don't know what you mean by how

much? You mean how many ads?

Q. Yes?

A. I cannot tell him exactly the number, all I can tell him is we don't want to put on there too many with any one program.

Q. But you could tell him how much space was taken

up, could you not?

A. I could get that from the theatre manager, I have no running record to show me exactly how many ads are running today on the screen.

Q. You haven't got that now, have you, because you

are dealing with one distributor?

A. That is correct.

Q. But you could put yourself in position to furnish that information, could you not?

A. Yes, sir, it would require some additional per-

sonnel.

Q. But you could inform a distributor how much space he could sell, that is, how much you would let him have if he could sell it, could you not?

A. I presume I could. You are talking about allocating a certain amount of space to the various screen

men, is that what you had in mind?

Q. No, I am just talking about the proposition if a distributor should come to you and ask you, "Mr. Landrum, I want to get out and sell some advertising. Do you have any space on your screen that we can buy from you?" Would you be in position to tell him?

A. I am pretty sure I would, if the decision required

it, I would get in position to tell him.

Q. And you could also require of the distributor to inform you of the length of his contracts with the advertiser, could you not?

A. Certainly, I would have to know that.

Q. And then you could also ascertain when the show-

ing of the film was to begin and when it was to end, couldn't you?

A. Yes. sir.

Q. And in that manner, you would be in position to know when your screens were filled and when your screens were not filled, would you not?

A. Yes.

So there is nothing about the business only bookkeeping?

A. Somebody else does that for me here, under my

system.

Q. Yes, you have now, under your contract; contracted with MPA to do that, haven't you?

A. Yes. sir.

Q. And there is nothing to prevent you from doing it yourself, is there?

No, sir, but I have a more economical [1038] method of doing it. They are keeping the records I would have to keep, and at the same time, they guarantee me so much money for my screens. If I want to put them out on the open market, I can't get the guarantee.

Q. But you can keep books and be in as good position to advise the other distributors what space is open, as

would he?

A. I don't know as I could, I don't know as I would be in as good position, because we are not geared to handle that particular thing, it would require.

Q. I am not speaking about the way you are geared-

Mr. ROSEN: Let him finish.

Q. I am speaking about, it is not impossible for you to do it?

A. No, sir, it is not impossible, it very definitely is not.

There is nothing to prevent you from saying what film ads will be shown on your screen and what film ads will not be shown on your screen, is there?

A. No. sir.

Q. Because you have always exercised that right?

I have always exercised that control and will continue to as long as we have screen advertising.

Q. How many ads do you have on your screen at any one time?

A. I don't think the footage is more than [1039] 350 feet under any circumstance, but I am speaking from memory, I haven't examined this contract in quite some time, but I think that is the footage permitted on national advertising. The rates differ as to national and local advertising, and I think the limit on local advertising is 300 feet.

Q. So do I understand you to say that there will be a limitation of 350 feet on National advertising, and

300 feet on local?

A. As I recall, that is the limitation.

Q. That is your best recollection?

A. Yes sir.

Q. Now, do you mean that they can—you can run 350 feet of national advertising and 300 feet of local advertising during the same performance?

A. I can say that I am safe in saying never in excess of 400 feet, I think it is less than that, but I think I will be safe in saying never in excess of 400 feet.

Q. Then do you know how many local ads that would-take care of?

A. Approximately four. Q. Approximately four?

A. Yes.

Q. Now, how many theatres did you say that you had?

A. I will say seventy odd.

Q. How many did I understand you to say you don't have any advertising in?

A. Two of them.

·· Q. So that would be approximately sixty-eight where you do?

A. Let me qualify that, there are two of them which MPA does not put any screen ads on at all, those two theatres I put screen ads on from time to time, such as Christmas trailers, or maybe a merchants giveaway, or something like that.

Q... All of the other are under contract with MPA?

A. That is correct.

Q. You said something about the guarantee, does MPA guarantee you a minimum amount?

A. Yes, sir, against a percentage.

Q. And if the MPA sells advertising over and above the minimum amount, you get a percentage?

A. Yes, sir.

Q. Now, are your screens always filled?

A. With only one or two exceptions, I think one of two small towns like Arp and Anahuac, where they have vacancies; but the managers in East Texas tell me they keep their screens pretty well filled.

Q. Well, that matter is handled through your Home

Office?

A. Yes, sir.

[1041] Q. Doesn't he, from time to time, render you an accounting?

A. Yes.

Q. On it?

A. Yes.

Q. To show you how many ads have been shown and how many have not?

A. Yes.

Q. And from that you are in position to know.

whether they are filled?

A. Oh, yes. I am pretty sure that they have been full because they have paid us an overage during the last year of the contract, and the minimum guarantee is enough they have to keep the thing pretty well filled to meet that.

[1043] EARNEST HUGH FORSYTHE was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION

Q. (By Mr. Burgess:) Will you give your full name, Mr. Forsythe?

A. Earnest Hugh Forsythe.

Q. Where do you reside?

A. 601 - I mean 201 Burr Street, Houston.

Q In what business are you engaged?

A. Well, I guess you would call it theater co-owner or manager. Me and my wife own the theater.

Q. You are a theater owner and operator?

A. Yes, sir.

· Q. What is the name of that theater?

A. Don Gordon Theater.

Q. Where is it located?

[1044] A. 4719 Canal.

Q. In connection with your theater business do you handle screen advertising?

A. Yes, sir.

Q. Have you had occasion in the past to handle screen advertising for Theater Publicity Service?

A. Yes, sir,

Q. In connection with your handling of screen advertising for Theater Publicity Service, did you have occasion to handle a film for Martin Motors?

A. Yes, sir.

Q. Will you state what your experience was bin handling that film for Martin Motors with Theater Publicity Service?

Mr. Collins: Mr. Examiner, I think I want to object to that,

Trial Examiner Kolb: The objection will be over-

Q. You may answer the question, Mr. Forsythe.

A. Well, what I understand, that the ad was sold for twelve months and I run the ad about six or eight weeks, I don't know just exactly, and I was paid every week, and then I run it six weeks that I wasn't paid for and that is when I took it off of the screen, so I run the ad about thirteen or fourteen weeks, something like that. I will have to check the records to—

Q. What was your arrangement with Theater Publicity Service as to when they should pay you for screening?

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A. Well, the contract called to be paid, you know, on the first of the month but when I was running the ad they paid me every week. That is how come me to run it six weeks without trying to find out anything

about it because I figured they would pay me after it run a month, and I run it for six weeks and I still had not received any check for them or heard from them.

Q. Then what did you do?,

A. Then I called them and their phone was temporarily disconnected and I tried to find out what was the matter and I couldn't find out, so I took the ad off the screen.

Q. Did you ever put the ad back on the screen?

A. No. sir.

Q. Were you paid for the six weeks service that you had run?

A. . No, sir.

Q. You had been paid for the prior six or seven

A. Yes, sir.

Q. — at the beginning? Have you at any time been paid for the last six weeks that you ran it?

A. No, sir.

[1049] LUCIUS HENRY MCKIBBON was thereupon called as witness for the Respondent and, having been first duly sworn, testified as follows:

# DIRECT EXAMINATION

Q. (By Mr. Burgess:) Will you state your full name?

A. Lucius Henry Mckibbon.

Q. Where do you reside, Mr. McKibbon?

A. 6636 Harrisburg Boulevard.

Q. Houston, Texas? A. Houston, Texas.

0. In what business are you engaged, Mr. McKibbon?

A. I am film manager.

Q. And for what theaters are you film manager?

A. I beg your pardon? Q. For what theater?

A. The Navaway Theater.

Q. Do you know a Mr. Ross, who was in the screen advertising business?

A. Yes, I do.

Q. In connection with the management of the Navaway Theater, do you run screen advertising? A. Yes, sir, I do.

Q. Over what period of time have you run screen ad-

vertising at the Navaway?

A. Well, that would be hard to answer. I have been at the Navaway Theater a little over a year. I was in the Boulevard Theater before that time and we have been running the screen advertising in the Navaway Theater since I have been over there.

Q. When you were at the Boulevard Theater, were

you manager there?

A. Yes, sir.

Q. And did you handle screen advertising at the Boulevard Theater?

· A. I did, yes, sir.

Q. And did you run any screen advertising for Mr. Ross?

A. Yes, sir.

Q. Will you give us his full name? My records don't show it at the moment.

A. Ross?

[1051] Q. Yes.

A. I couldn't tell you.

Q. Will you tell us what your experience was in running the theater screen advertising for Mr. Ross on the Boulevard Theater?

A. Well, I took the Boulevard Theater over and we had screen advertising and we ran it at that time for four different companies; Ross was one of them. Ross seemed to have the majority of the ads on the screen. One week we would have anywhere from fifteen to twenty minutes screen advertising. The next week we might drop back and have ten minutes of advertising and it was more or less a nuisance. People get restless. They booed. They came in to be entertained and you put on ten or fifteen minutes screen advertising and we had to cut the screen advertising out all together or boil it down to a point where it wouldn't be booed and at the same time we would get some revenue out of it, so Mr. Wilkins, the owner of the theater; and I got together and decided to cut part of it, out. Well, the screen advertising we

had been running for Ross and a man by the name of McGowen was more or less amateurish, it wasn't professional at all, and had no selling value as far as we could see and we were in the neighborhood with these merchants and we decided to chose between MPA and Alexander and run a number of ads on our screen.

After talking the thing over, Mr. Wilkins [1052] favored Alexander and I wrote Mr. Ross a letter and also MPA and Mr. McGowen telling them we were discontinuing the screen advertising, although if they had any contracts that had some time to run, we would go ahead and show them the courtesy of running the contracts until they expired. MPA wrote back and said they had one contract on my screen and had about nine months, I believe, to run. We ran that contract. Mr. McGowen said he had no contracts at all, it was sold on a weekly basis, and I couldn't get an answer at all from Mr. Ross. We waited, I guess, eight or ten weeks and couldn't get an answer from him, so Mr. Embry, I called him and asked what to do. They continued to send ads over each week and still had that ten or fifteen minutes of screen advertising 4 didn't want.

So Mr. Embry said, "Do you have any records of who

the merchants might be that Ross had sold?"

So I said, "Yes," and Mr. Embry came out and we called on these merchants one by one and I think we ran into one merchant who said he thought he had a contract. The rest of them said they had no contract at all with Mr. Ross and this one merchant said he thought he had a contract, but didn't know where it was, so the next films Mr. Ross brought over I refused to run, and that was about all there was to it. We just refused to run any more ads.

Q. You stated that you chose between the ads of a McGowen, MPA, Alexander, and Ross?
A. That is right.

Q. At that time. And you cut off the Ross and Mc-Gowen films because they were of an amateurish nature?

A. That is right, sir.

Q. And after that time you did business exclusively with Alexander?

A. That is right, sir.

Q. . And was that arrangement satisfactory to you?

A. Yes, sir, very satisfactory,

Q. What limitation did you place as to the number of ads that would be shown?

A. Four.

[1065.] MAX A. CONNETT, was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

## DIRECT EXAMINATION

Trial Examiner KOLB: Give your full name to the reporter.

The WITNESS: Max A. Connett.

Q. (By Mr. Rosen:) Where do you live, Mr. Connett?

A. At Newton, Mississippi.

Q. In what business are you engaged?

A. Exhibition of Motion pictures.

Q. Do you own any theatres?

A. I own seven.

Q. Where are they located?

A: Newton, Mississippi, is my headquarters, Forest, Mississippi, Bay Springs, Mississippi, Bude, Mississippi, Collins, Mississippi, Carthage, Mississippi, and Macon, Mississippi.

Q. Is it your policy to show any motion picture ad-

vertising on the screens of your theaters?

A. Yes, I do, and always have. It has been a nice source of revenue, especially during the depression.

Qy For how many years have you shown

[1066] motion picture advertising?

A. I have only been in the business since 1934, that is fourteen years, and I have shown com-

mercial advertising eyer since I started.

Q. Well, starting at the beginning; say fourteen years ago, what was your policy in displaying motion picture advertising on your screen? Did you have a contract with one motion picture distributor or several to show those films?

been down here signed a contract with any advertiser.

Even my agreement as to the price that I would receive for displaying that advertising has been a verbal agreement, and up until this year I have never signed a contract of any sort.

Q. Up until this year?

That is right.

Well, then, up until this year how many different distributors were there who displayed advertising films

on your screens?

A. Well, I more or less had the screen as an open screen, by that I mean I allowed all the distributors or the makers of commercial advertising to sell film in all of my towns catch as catch can. I had the Motion Picture Advertising Service out of New Orleans, I had the Alexander Film Service out of Colorado Springs, I had one or two smaller companies by the name of Town

Talkies, I think they later went to the name of Commercial Pictures, and I am not positive, but I think perhaps one other small company, and I don't recall their name, came in and asked for

the use of my screens, and I did just like I did the rest of them, I told them if they could sell it, I would run it.

Q. Explain for a moment, Mr. Connett, up to this year how that arrangement worked. What I mean is, explain for the record here how you would know what ads would be put on the screens, what price you would be paid, since you had a verbal arrangement with them,

and an open policy.

A. Well, to be right truthful about it, it was a little difficult in trying to remember the agreement I had made with the companies, and due to the way that I received pay for the ads that I did run on the screen, they usually came in thirty days after I had run the ads, and it was very difficult to keep records, rather, to keep the operator in the booth to keep records of what had run, when it had run, and more or less detailed reports and it was very unsatisfactory to me in trying to know just where I stood at any time I didn't. didn't know what I was hitting. Some companies at that time had what was called a national advertising trailer, I believe it was, which carried a different rate than my local advertisers and it was difficult for me to find out whether it was a national advertiser or a local advertiser or whether it had been put through for, we will say, a Chevrôlet Company locally, [1068] whether it was a national Chevrolet ad or whether it was a local Chevrolet ad, I never could figure that out, I never did know, and I know that I didn't receive payment lots of times for ads that I did run.

Q. Because, you mean, of the difficulty of keeping records on it?

A. It was just a job to keep books on it all the time and I just became disgusted with that type of operation.

Q. Well, what has been your policy with regard to the number of ads or the screen time allowed for advertising?

A. Well, I have never wanted more than six ads in any given week on my screen. That would be a maximum.

Q. When you say "week," you mean per performance?

A. I mean per performance, yes. I am speaking now that those ads usually run a week, that is what I meant. I wouldn't want more than six, I wouldn't have more than six. Even six is sometimes a little bit too many and unless you have a smart operator that knows how to splice them on to certain films and keep them separated a little bit, why, they become annoying to the public if you don't know how to put them on. I just wouldn't have more than six on the screen. Six is almost too many.

Q. And that policy of having six has been your policy for the past, says, fourteen years?

A. That is right.

Q. As a result of your dissatisfaction with the past method, that is, of having an open screen available to more than one motion picture advertising distributor, what have you now done?

A. Well, the past thirteen years, as I say, I let these salesmen, different salesmen and different companies

come and sell these theaters on a catch as catch car basis. If they happen to get to the Chevrolet man first, why, they sold the Chevrolet man. If they happen to get to the Coca-Cola man, they sold the Coca-Cola man, and as of this year, the early part of this year, it really started over two years ago, I became very disgusted with the different salesmen coming in and more or less crossing each other up selling these ads. I would get two drug store ads in one week, I would get two drink ads in one week, the result being that my own local orink distributor would complain bitterly that he was being handicapped by this other ad on the screen, and sometimes they sold merchants that I knew would not be able to pay, they may run two or three weeks and then they would come off the screens, which doesn't do the theater any good, either, so I decided that I would take one company, I would eliminate all bookkeeping, I would eliminate any double ads on the screen, like two drug stores, and I would get one film each week that my operator would know was coming and he would more or less look for it on a certain day of the week and he would take that film and he would cut it in two or. three pieces and splice it into certain parts of the program. I didn't particularly care how many was running

except I didn't want more than six to run, and

[1070] I just forget about screen advertising.

Now, that exclusive arrangement that I have, I asked for, I was not promised anything and I was not pressured into it, I asked for it because I wanted it myself to eliminate any of those little worries that I had had with screen advertising up to that time.

Q. When you asked for it, explain to me what you mean by that. Knowing what companies were in the

field, did you ask all of them or one of them?

A. I asked one company. I asked the company that I felt had done the best job for me in the past few years. I particularly became incensed at one or two representatives of companies that came in maybe once out of six or eight months and they would sell two or three ads and that would be the last time I would see them for another six or eight months and it wasn't a

satisfactory arrangement at all because at the best you have trouble with some of your merchants sometimes. Either an ad is late in coming and it isn't shown, or the ad may not be according to his liking that week, he may be getting washing machines advertised this week when he specifically requested irons, or something, so that the merchant himself becomes disgruntled, he would come to me and complain. Well, I can only talk to the salesman that sold that ad and if he doesn't come but once in six or eight months it is impossible for me to correct a situation like that. The company that I picked,

the salesmen work very hard at trying to keep customers satisfied. He comes in at least once

in every thirty days and I appreciate that from the standpoint that it saves me a lot of headaches and keeps all of my customers satisfied, because in a small town we have to live with those customers, they are more than a customer of ours, they are our neighbor and they have to be treated in a little special way, so I picked the company that I thought could do the best business and the best business for me. I also picked it from the standpoint of being assured of getting my money now and then, which I had a little difficulty in the past in some of them, some of the fly-by-night organizations that came up and tried to get into the field during the war, especially. I missed several checks.

Q. What is the name of the company you have concluded to do business with right now?

A. Motion Picture Advertising Service out of New Orleans.

- Q. Is that now a written contract or an oral arrangement?
  - A. That is a written contract.
  - Q. How long has it been in force?
  - A. Since January of this year.
- Q. What is the term of the contract, if you remember?
  - A. I think it is two years.
  - Q. Since January 1, 1948, when that arrangement

commenced, have you found that arrangement satisfactory, that is, doing business with one dis-[1072] tributor, rather than to have an open policy?

A. Yes. Yes, it is much better by far. Q. Would you go back to the old policy that you had

for the thirteen years?

A. I would not. If it would be impossible for me to sign a contract with any company and I would be wanting to do business on this same method I certainly would not allow except one company to come in and sell my towns. I feel that I keep my finger on the pulse of that a whole lot easier that way and it just eliminates so many little headaches that we have in the theater business, anyway.

Q. Mr. Connett, you spoke of finding in the past when you had an open policy salesmen might come in and sell two drug ads or two ads of competing businesses on your screen, and you found that unsatisfactory?

A. That is right.

Q. You did mention a moment ago that the merchant himself was dissatisfied?

A. That is right.

Q. When you spoke of the merchants, you mean, one

of those who had given the ad?

A. Well, those companies that come in, of course, don't know what the other company has sold and he may go to a drug store and say, "Well, I—"

Mr. Collins: Mr. Examiner, I want to ob-

[1073] ject to all of this speculation business.

Trial Examiner Kolb: I think that the witness is covering a matter which he has previously testified to. It is a matter of repetition. I will sustain the objection.

Mr. ROSEN: Well, what I was trying to do, Mr. Trial Examiner, is to have him explain, when he said that he was dissatisfied with having two of the same ads I was trying to get the reasons why.

Trial Examiner Kols: He has testified as to duplica-

tion of ads between merchants.

Q. You spoke a moment ago about the dissatisfaction of the merchants. What is the audience reaction to hav-

ing two similar ads where you have only six advertisements during the performance?

Mr. Collins: Mr. Examiner, I think I am going to object to that. I don't think it is material to the issues.

Trial Examiner KOLB: Well, the witness hasn't been qualified, but I think that he can testify as to the audience reaction, so let him answer.

A. Well, the audience, of course, are not too happy with screen advertising and they are not too happy with trailer advertising, previews of coming pictures. We have a lot of them get up and go out and smoke during those things and so anything we can do to eliminate some of the ills of the commercial adver-

tising or even the picture advertising, why, we try to do. I think one of the ills would be a duplication of drug ads or a duplication of washing machines, or a duplication of anything. Most certainly they should not be subjected to more than one type of advertising in any one performance or week.

NORMAN L. CARTER was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

# DIRECT EXAMINATION

[1085] -Trial Examiner KOLB: Will you give your name to the reporter?

The WITNESS: Norman L. Carter.

(By Mr. Rosen:) Where do you live, Mr. Carter?

New Orleans, Louisiana.

With what company are you connected? Paramount-Richards Theaters, Incorporated. A.

In what capacity?

A. Assistant general manager:

How long have you been connected with that company or its predecessor?

Slightly over thirty years, sir.

Q. The business of Paramount-Richards Theaters, Incorporated, and its predecessor has always been in the exhibition of motion pictures, hasn't it?

- A. Yes, sir.
- Q. Owning and leasing the theaters and exhibiting the films upon the screens?
  - A. Yes, sir.
- Q. During your thirty years' experience in that field how long has motion picture advertising been shown on the screens of the theaters with whigh you are affiliated?
- A. From 1918, when I first went with the predecessor company, until the second World War, with the [1086] exception of probably intermittent lapses in between negotiations of contracts. I would say it was continuous.
- Q. How many theaters are presently operated by Paramount-Richards Theaters, Incorporated?
  - A. Sixty-six.
- Q. What has been the policy of your company since 1918 until, you say, the second World War began with regard to the display of motion picture advertising from the standpoint of your contracts with the distributors, that is, whether you had an open policy on the screen, or one in which only one distributor was permitted to show advertising films?
- A. I will frame it this way: While we have negotiated with one or two companies, we have never had any contract except an exclusive one.
- Q. So that it has been the consistent policy of your company when it displayed motion picture advertising to have an exclusive theater screen agreement with one distributor?
  - A. That is correct.
- Q. What are the reasons that motivated your company in adopting that policy?

Mr. Collins: I want to object to that, Mr. Examiner. I submit that the reasons for the theaters adopting that policy are not material to the issues.

A. Well, of course, there are some practical objections which we don't consider to be ones that we can't get over, being the splicing of screen ads of small spools from different advertising

agents, which at times causes confusion in putting it together and shipping, but that is a minor thing. The big problem which Mr. Connett mentioned never worried us to any extent because our billing was always through our home office in New Orleans, but being a circuit, we have to consider ourselves as a foreign corporation operating in towns where our managers, with very, very few exceptions, came from outside of the town, they were not native, so in the vernacular they were to them foreigners and therefore in the conduct of our business we had to always give a great deal of thought to creating goodwill for our company. As to the confusion in selling where you have competing companies with the privilege of selling your screen to advertisers, both will sell in the same category on the same day, both think they are sold and you have got to turn one merchant down and say, "I am sorry, but the Jones Drug Store got in first," and you have made an enemy and we being an out-of-town company can't make enemies when we are in that situation. We don't have the advantages of the home town operator who operates his own theater. That, of course, is not so important, but it has a cumulative effect with other objections. In doing business with one company we, of course, limit the categories to whom they may sell.

Q. You mean the character of the advertis-

A. The character of the business. We eliminate advertising of beer, whiskey, of course, wines are out, mortuary establishments we restrict entirely, but we have to look at it from this viewpoint: There is a great deal of resentment by the public because they feel that we are taking up time for which they have paid to be entertained. Our policy for years has been not to permit screen advertising in our principal theaters. When I say principal theaters, I mean theaters like the Saenger in New Orleans, the Saenger in Mobile, the Saenger in Pensacola, the Strand in Shreveport, the Hart in Baton Rouge, the Paramount in Jackson. Those theaters take the top admission price on our circuit in this territory. Our commitments with the screen ad-

vertising companies do not include screen time in those theaters. In the theaters where we are charging a lesser admission, we feel that there would be less resentment to it and as the town is smaller we would use screen advertising and have used it in what we term the "A" theater, the Paramount in Greenville, it is a small community and most everybody knows the Mr. Jones who runs the drug store. Our feeling has been that if we can take one company and have them follow the restricted categories that we give them, knowing that they will have a number of certain, definite situations that they can sell these categories, and we try to tell the heads of that company what we feel to be the best merchant and to get that account, if they can, that if they

have that, without coming in and trying to [1089] sell quickly from a library, they are then able to make a better film that ultimatel will be developed into entertainment rather than simply the old stock shot to which you put a couple of frames at the bottom, and it was the Red Star Grocery, for we believe that the public is entitled to a break if we are going to get money by the fact that they are there, because attendance in the theater is the same thing as circulation for a newspaper, so if we are going to get money for it, we felt that we should do what we could to improve the quality and the narrative of an advertising film, and if we permitted the policy of cutthroat selling between salesmen we wouldn't get that. It gave an opportunity to produce a better advertising film.

Q. When you had contracts for screen advertising, was there any guarantee in those contracts to you of a minimum amount irrespective of the number of ads displayed?

A. As I recall it, we had a guarantee of four. We limited the number to six. As I recall our agreements, we were guaranteed four in every theater in which we had contracts.

Q. Your Company insisted upon having a minimum guarantee before you would enter into the contract, didn't you?

A. Yes.

Q. Would it be possible to obtain any guarantee from any distributor unless he had the screen exclusively? Mr. Collins: I want to object to that.

Trial Examiner KOLB: The objection will be

[1090] sustained.

Q. You have given, Mr. Carter, several reasons why your company adopted the policy of doing business with one distributor. Was the question of remuneration to you one of the factors that motivated you in adopting that policy?

A. Certainly. We have to select a company which

we think would secure-

Mr. Collins: I want to object to all of that narrative. He has answered the question.

Trial Examiner Kolb: The objection will be sustained as to the latter part of the statement.

Mr. ROSEN: If the Trial Examiner please, don't you think the witness has a right to—

Trial Examiner Kolb: He was asked whether or not remuneration was a matter which he took into consideration in negotiating the contract and he said "Certainly," or "Yes." The question has been answered.

Q. At the present time and since about the commencement of the second World War, your company does not display screen advertising?

A. That is correct.

Mr. ROSEN: That is all I have.

#### CROSS EXAMINATION.

[1091] Q. (By Mr. COLLINS:) Do I understand that,
Mr. Carter, since the beginning of the second
World War none of your theaters carry screen advertis-

World War none of your theaters carry screen advertising?

A. That is correct, sir.

Mr. Examiner, I would like to make a statement with regard to that. Just baldly, it doesn't sound so good. Through the War Activities Committee of the industry, who had offices in Washington, we were receiving so many films from the various Government agencies, conservation of fat, recruiting films, and all the services

and all the different agencies of the Government, which in time of war we could not refuse to run. That was our pledge to the President, President Roosevelt, through our national organization. Of course, during war periods, there was a tremenduous amount of business in all theatres so that the income which we derived from screen advertising was not necessary. The difference was made up in the volume of admissions and we felt that we had enough on the screen without inflicting the patrons with the addition of screen advertising.

The delay at present in getting back to screen advertising in those that aters in which we had been running it is due to the fact that we feel a definite change in the character of the screen advertising film is going to take place and we think that that is going to develop into something along different lines. Just exactly what

it is going to be, we don't know. We have [1092] seen one or two ads, one was made for United Fruit in color cartoon, and it may be a different thing, one main tobacco line, and the revenue which you get is based upon the number of people that see it, it is a different guarantee arrangement, so we have preferred to wait. I didn't want you to get the impression we had discarded screen advertising entirely.

Q. You never did permit it in your principal thea-

ters, did you, Mr. Carter?

A. I don't think we did. There may have been one or two of the towns outside of New Orleans where for a short period they may have, but we eliminated that. In the last contract that we had I am positive that our five or six principal theaters in the larger towns did not run screen advertising.

Q. Your reason for that was the audience reaction

to the advertising films, was it not?

A. Well, we got a higher admission in the bigger theaters and we tried to frame a program with some art to it, doing it. It is what we call our show case in town, in the big town, and we think that a program of screen ads might be somewhat of a jolt thrown in there.

Q. Now, you used a term while ago, Mr. Carter, that is a little bit new to this proceeding up to this date and

that is that you said that you didn't want to inflict that on the public, on your customers.

A. Yes, because they certainly had enough with all of the film that the Government was

giving us, they had sufficient. They came in to be entertained and we are not going to take any more minutes away from them, because that three minutes seems like thirty.

Q. And you do consider it more or less of an infliction on the audience, this screen advertising, don't you, Mr. Carter?

A. Well, we can certainly get that from the resentment of a great many people who complain about it, but that was why in my remarks in explaining the bald statement that we were not using it and the reason why we go for one company is that we feel that they can make a better film and get the advertising into the entertainment field and that is one of our reasons for sticking with a single company and making an exclusive contract.

Q. You haven't dealt with that company since the

beginning of the war?

A. Correct, because I stated we felt that we didn't need the money from screen advertising, the wartime business made up all we needed. You know, we could make up to a certain point of money.

Q. And the picture with reference to the bananas didn't come about before the second World War, did it?

A. No, sir. Get my statement, I said that the banana advertisement is new. I think it has been out probably a year. We have seen it. I have looked at it several times. Tobacco Land is about six months old.

It is a new form of screen advertising and it is very entertaining, which I must admit some of the stock shots and the regular screen ad-

of the stock shots and the regular screen advertising is not, and is a different method of payment entirely.

Q. Up until the first of the last war there were no such screen ads as that in existence, were there?

A. I believe that some of the motor companies and one of the cigarette companies had put out some film in color which were longer than the average advertising

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unit, as we call it. They probably ran a minute. We did not run those. We could have received more, but we did not run them. We stuck to the six units, not to exceed fifty feet, including all leaders.

Q. You are acquainted with what are called library films, are you not, Mr. Carter?

A: Yes.

Q. Weren't most of the advertising films before the beginning of the second World War what are known as library films?

A. I think that is correct. I think that is correct, but better library film has been made and it was made

before the second World War.

Q. Pardon me?

A. Better library film, we call them stock, better ones had been made. I do know that MPA made a complete revision of library stock before our last contract.

Mr. COLLINS: I believe that is all.

[1096] WALTER SAUSSY: was thereupon called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

Trial Examiner Kolb: Give us your name. The Witness: Walter Saussy.

- Q. (By Mr. Rosen:) Where do you live, Mr. Saussy?
- A. New Orleans.

Q. What is your business?

- A. I operate an advertising agency which is an agent between two principals. We represent the advertiser and we place business with the medium. We are allowed a commission by the medium by being a recognized agent. We are appointed by the advertiser to serve his account.
- Q. How long have you been engaged in the advertising business?
  - A. Since 1928.
  - Q. What is the name of your agency?

A. Walter Saussy Advertising.

Q. Will you give us the names of a few of the most important advertisers?

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A. Currently, the American Brewing Com[1097] pany, producers of Regal Beer; the William
B. Reily Company, roasters of Louisiana Coffee;
the Elmer Candy Company; D. H. Holmes, the department store here; I have served the Standard Oil Company of New Jersey, I have served the Ford Motor Company. I am associated with Maxon, Incorporated, of Detroit, a national advertising agency, and I was formerly associated with McCam-Erickson, Incorporated, serving those two agents as their southern office.

Q. McCam-Erickson is one of the largest advertising

agencies in the United States?

A. I think McCam-Erickson is the fourth largest and Maxon would come into, probably tenth.

Q. What are the different media that you have used

for your clients in advertising?

A. We use in the advertising business organized established medias. Primarily it is radio advertising, newspaper advertising, and outdoor advertising, all of which are organized and integrated together. We also use motion picture advertising, however. It is a minor one of the medias. It is not considered a major media.

Q. You didn't say magazines?

A. Yes, we use magazines. I use very little magazines because of my sectional business, see. I do some magazine advertising but because of my sectional business, it is a small part of my business.

Q. Now, you have said that motion picture advertising is one of the minor media for advertising. Could you give us from your own experience just an estimate of the figures on that? When you say it is minor, about what proportion of the appropriation that the advertiser gives you do you spend in motion picture advertising?

A. Well, to answer your question, I will try to arswer it more on the national basis. Of the total advertising dollar I doubt if motion pictures—this is an estimate—would amount to more than three or four percent of the total advertising dollar because of the limited

space. If they could accommodate more advertisers it would be a bigger media, and if it was better organized it would be a bigger media, but they can only show four or five spaces, admit four or five spaces to the screen during the showing of one film. Therefore, it is extremely limited. The others, the newspapers can accept in their pages—they have forty-six pages of newspaper, the Sunday section you are familiar with, it is big, radio, of course, has a limit, too, outdoor has a limit, the magazines don't have the limits that the others have.

Q. From your knowledge of the dusiness, what proportion of the newspaper space is devoted to advertising compared with reading matter?

A. That proportion is increased due to the news print shortage. Now, it will reach as high as up to eighty per cent.

[1099] Q. In normal times when there is not a shortage of news print, what will it run?

A. Approximately sixty per cent, forty per cent news or service to the public, and about sixty per cent paid advertising space.

Q. What about magazines?

A. That runs pretty near the same proportion.

Q. What about radio?

A. Radio has the problem there, they cannot crowd, radio people won't listen to the radio if it is all advertising any more than they would look at a motion picture screen if it was all advertising. We are permitted by the networks—and we usually use it all—a two minute to three minute commercial in a fifteen minute program. We make three one minute announcements to identify the product and to advertise the product, so I would say up to twenty per cent.

Q. And how does that compare, those mediums you have spoken of, with motion picture advertising, that is to say, what proportion of the total motion picture pro-

gram is devoted to advertising?

A. Well, it has been my experience that if they show more than four or five motion picture advertising films, which are limited to about fifty seconds to one minute,

the average time, we call them in the trade minute movies, you can't use but about five with every feature.

If a feature went three hours-

[1100] Q. Say two hours.

A. Well, two hours, one hundred twenty minutes, and you are permitted to use five of those minutes, it would be about four per cent, sir.

Q. Have you in your business used motion picture

advertising for your clients?

A. I think I have been one of the largest of the southern agencies to use motion picture advertising, yes, sir. I have used it extensively.

Q. What factors do you take into consideration before devoting any of your clients' money to motion picture advertising, or, for that matter, any advertising?

A. Well, number one, I cannot handle any advertising that can't be planned in advance. The point where advertising leaves off and selling takes on is a point that you can barely distinguish. The two have to be fully coordinated, so that the primary thing to me is to be able to plan in advance, to be able to get all the value out of the advertising, and you can only do that by full coordination through—the term merchandising is used in our trade, to merchandise the advertising—through the sales organization to the consumer, and so that we can plan in advance and be assured of space we contract in advance. In some cases it is necessary to give non-cancellable contracts in order that the medium might

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be assured that the advertiser is going to use it and we are assured of the space, so we very often enter into bidding contracts in which we

make a non-cancellable exclusive agreement.

Now, in motion picture advertising up until the last, say, eight years, I never used motion picture advertising. It is only since it has been organized, it is only since they have published rate books, it is only since they have given us assurance that we can get a schedule. In serving the Ford Motor Company and the American Browery, I have used, I have had the largest use of motion picture advertising. In the case of Ford it has much the largest use. Well, for a while I couldn't in-

terest the Ford Motor Company because I couldn't assure them of any space. They would give me releases, a schedule of advertising, and when I went to try to place it at least eighty per cent of the dealers were unable to get it because the theaters cannot accept more than four or five spaces at a time, so I would say the biggest single factor is to be assured of space.

Q. Have you ever made any efforts on your own part to go direct to the theaters in order to display your

client's advertising?

A. Yes. I have obtained in the City of New Orleans an exclusive arrangement with the theaters for Regal Beer and h wouldn't have bought that space in the negro theaters had I not been assured of being the first beer to buy.

[1102] Now, there is another big factor in motion picture advertising, unlike the other mediums. If I am going to run newspaper advertising it costs me about \$150.00/ to \$200.00 to produce the master ad that is duplicated in all newspapers on the list. In order to use motion picture advertising, it can cost up to \$2,000.00 to produce the single master for a one minute movie and then that has to be duplicated.

Now, unless I am assured of a sufficient number of butlets in which to run that so that I can charge off the cost, I am prohibited from producing something that will please the public.

- Q. Now, getting back a moment, Mr. Saussy, to the question of the advertising agency like yourself going direct to the theatre in order to contract for space, you say you have done that locally?
  - A. Yes, sir.

Q. Would it be practical for you to do that yourself with the exhibitor in a number of cases, if you needed—

A. Not beyond the very local field. In the case of Ford, had I been required to do that to be assured of space, the cost would have been prohibitive. I couldn't even have considered it. It would have cost me more than my fifteen per cent commission, which is the maximum that I am allowed by the medium to even arrange the schedule. It would be prohibitive.

Q. Well, therefore, if you had to go out and yourself get the license from the theater to exhibit advertising in the theaters you wanted, would you use the motion picture medium for your advertiser?

A. Definitely not. I didn't. When those conditions existed I did not use them. They did exist at one time.

Q. What is the only way that you find it practical to use motion picture advertising as one of the media for your clients?

A. Well, first, I have got to be assured of having some representative that understands the medium representing the theaters. That representative must have under contract a sufficient number of theaters to be able to guarantee me enough space to make it practical for me to produce a film. That is number one. Number two, I have to be assured of a source of producing a good film, one that won't bore the public but will please the public.

Q. Are you familiar with the so-called library or syndicated films that are produced by the leading motion

picture distributors?

A. Yes, sir.

Q. Have you on occasions used those films for your clients?

A. It is the only service that I have available. I couldn't use the service in some cases if it wasn't for the existence of those libraries. It would be pro[1104], hibitive.

Q. Have you also had experience having displayed for your clients special films that are produced

especially for that advertiser?

A. We always produce and prefer to produce a special film. The companies that produce the library films only produce them as an expedient to serve business. Now, where we can—you see, library service is not just common to motion pictures, in the field of outdoor, there is some library service for posters, there is some library service for newspaper ads, but, of course, you don't have an advertising unit built independently for the product,

you are using the best thing that is available, so normally we produce where we can. In the case of Ford and Regal Beer we produce exclusive films.

Q. Who does that work for you, the producing?

A. It is done by different contractors. Sometimes the motion picture distributors themselves have services that they use to build their library service, will contract with them, sometimes we will contract with individual producers in Hollywood, in Detroit, but that is done on a separate contractual basis.

Q. Have you ever done any business with Motion Picture Advertising Service Company, Inc., of New Or-

leans?

A. Yes.

Q. Both with regard to using their library film and also special films that are produced for the particular advertises?

[1105] A. Yes. I have used the library and I have had them act as my agent to help produce films, and I have also had films produced by outside agents.

Q. Have they ever refused to exhibit for you/special advertising films that are produced by other companies

than themselves?

A. No. On the contrary, they have urged me to produce my own films. They have urged me to ask clients, to encourage clients—as a matter of fact, the one thing holding the industry back is the absence of films of very high quality produced by the individual clients themselves, so they have encouraged us in the agency field to get our clients to produce their own films. They wouldn't be in that business if they could get out of it, in the business of producing the films.

Mr. COLLINS: Mr. Examiner, I think I want to object to that, and I move to strike it. Now this man is testifying about whether or not another company would be in the business if they could get out of doing certain

things.

Trial Examiner Kolb: We will let the answer stand. Q. Mr. Saussy, are you familiar with the concern known as Commerce Picture Service?

A. Yes.

Q. Have you ever used films produced by them?

A. I couldn't say that I have. I may have. I am familiar with them. I am familiar with the service and I think I have, but I would have to go to

my records to be able to say definitely.

Well, I asked you whether or not you had used films produced by them. Have you ever used the films that they use in connection with their service, whether

they produced them or not?

A. That question I would have to refer to my records on. If they produced any of the Ford films—I have used films produced by Alexander Film Company. I have used films produced by Motion Picture Advertising Service, I have used films produced by Harry McMann in California and I have used films produced by a firm in Detroit under the sponsorship of J. Walter Thompson, Advertising.

Q. Have you ever seen a demonstration by Commerce

Pictures of their films?

A. Yes. I am thoroughly familiar with the service.

Q. How does the service used by Commerce Pictures compare with the service of Motion Picture Advertising Service, Inc.?

Mr. Collins: I want to object to that.

Trial Examiner Kolb: The objection will be overruled.

Mr. Collins: Mr. Examiner, I submit that it isn't a question here of the comparison of any one, two, three, or more motion picture concerns. There is no issue in

this case of a comparison between the motion

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[1107] picture concerns.

Trial Examiner Kolb: Well, to the extent that the respondents have based their defense on the ground that the type or the quality of the film is undesirable and is not used for that reason—that is why I am permitting the witness to testify to that.

Q. Just so you understand my question, Mr. Saussy, when you make a comparison I want to know as to type and quality, in other words, how do they compare?

A. Well, I would compare quality of films—the films

of Commerce Pictures that, I have viewed have been poor in quality, the films of the Motion Picture Advertising Service have been from poor to excellent. The best films that I have ever viewed are the films produced by independent producers under the direction of the advertising agencies serving the accounts and separated completely from the motion picture advertising distributors.

Q. And that is why you prefer to use specially made films rather than the usual library service?

A. That is the reason we exist. We are an agent between two principals. It is my job to produce the production. The advertisement I create, and I am supposed to create it through independent sources. I do it. None of the magazines produce the ads that are produced in the magazines. The radio stations don't create the shows

that go on the air. The newspapers do not make up the ads. I am the agent that does

that and in the field of motion picture advertising it will never reach its full realization until there is a much, much higher quality of production by independent producers.

Q. Would you consider the use of this medium for your clients if the motion picture distributor did not have definite contracts with theaters permitting them to exhibit the films?

Mr. Collins: I object to that.

Trial Examiner Kolb: The objection will be susstained. The witness has answered that question pre-The witness has already testified that he has to have his outlets in order to place his advertising. That answers the question you are asking now.

Mr. Rosen: Just answer Mr. Collins' questions on cross examination.

CROSS EXAMINATION

Q. (By Mr. Collins:) Mr. Saussy, you say the best quality films are produced by producers who are not connected with distributors?

A. Yes. sir

That is, the best quality films are available to all distributors?

Yes, sir.

Q. Now, you talk about a guaranteed space, Mr. Are you assured at all times that you can get your advertising screened at the time that you

want it screened?

No, sir. The limits of showing from four to five films at one time where it is limited to only five exhibitors means that only those that will guarantee to use the medium on a regular schedule are able to get space. The same is true in radio. Unless I agree to take a space on the radio and use it fifty-two times a year, each week, at that time, I am not assured of that space. I have to contract for it and so if I have that space I have prior right to it and I hold on to it as long as I want to use it.

Q. Don't you find at times that a space on a screen

that you want is filled?

A. Why, of course, because there is a limit to the number\_

And before you can assure your client of the space that is available you have to check, do you not, with the distributor?

Yes, sir. A.

But you know in advance the price which you will have to pay, do you not?

Yes, sir.

Q. You know that through the use of these rate books?

Yes, sir. The rates vary. A.

Q. That is, vary with the different theaters, do they? A. With the different theaters and there are increases from time to time per theater and we have to have a central unit through which .

we can gather that information.

Q. Now, you don't do any local advertising, do you? What I mean by that, for a local concern, like arranging for advertising in just one theater?"

Yes, sir.

You do?

A. Yes, sir.

Q. Now, isn't it possible for you to do that local advertising without the use of the distributor with an exclusive contract?

A. In the City of New Orleans, as an agent in the City of New Orleans, yes, it would be possible for me to go to a theater and make an individual contract with that theater to exhibit a film that I have produced, but it wouldn't be possible for me to arrange a schedule over an area and, of course, while we do serve some local business I couldn't exist as an agent unless I could win clients that have enough business spread out over an area to maintain my organization.

Q. Now, you are somewhat familiar, are you not, with the cost of the production of these advertising films?

A. Yes, sir.

Q. And would it be possible for a local merchant to have special films made up every time he decided to use motion picture advertising?

A. How many theaters would he use, sir?

[1111] Q. Well, in a small town, say.

A. Yes.

Q. Do you think he could?

A. One theater in a small town?

Q. Yes.

A. No, he couldn't produce his film exclusively for use in that theater.

Q. How many theaters would you think that it would be necessary for him to use before it would justify him to have special films made up?

A. Well, I would estimate—this will have to be an estimate, sir—if the film was produced in quality so as to please the audience and not do injury to the theater owner through its exhibition, that it would cost him not less than \$200.00 to produce a single film, and that would be prohibitive if that film was only exhibited once. Now, it is our custom to repeat films at least twice, come back at a later date and repeat a film, so it would require him to produce approximately 25 films a year to maintain continual showing every week in the theater and

that would make it prohibitive, I believe. It would cost him from \$3,000 to \$5,000 to produce his films.

Q. And then you would not only have the cost of production of the film but he would also have the cost of the screening?

A.) Yes. To course, the cost of the screening wouldn't enter into whether he would use it or not, because that would be the same whether he was using a large number of theaters or just that one theater.

O. And just the common ordinary run of drug stores and the common ordinary run of garages couldn't use that kind of advertising profitably, could it?

A. That is right, sir.

Mr. COLLINS: I believe that is all.

CARL J. MABRY was thereupon called as a witness for the Respondent, Motion Picture Advertising Service Company, Inc., and, having been previously sworn, testified as follows:

## DIRECT EXAMINATION

Q. (By Mr. Rosen:) Mr. Mabry, you have previously testified in this case, have you not?

. A. Yes, sir.

Q. And have given testimony with regard to the terms of the contracts that you make with theaters?

A. Yes, sir.

Q. Would it be practical for Motion Picture Advertising Service Company, Inc., to obtain contracts for the limited time of one year?

A. No, it would not. It would not be practical for a number of reasons. Do you want me to give them?

Q. Would you state for us what the necessities of the case are, that is, how long a contract should be in order to make it a practical operation, and your reasons for your statement?

A. Well, in the first place, you couldn't attract capital if you didn't have longer term contracts than one year. I wouldn't invest my money in a company where I could

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hold out a market for only one year. You couldn't attract employees, worthwhile employees, if you could hold out a future of only one year. You couldn't attract salesmen in a territory to change from, we will say, one selling job to our selling job if we could assure them of only one year. You couldn't borrow money from the bank if you told them, "Well, I have a one year market." You couldn't afford to invest in equipment. For example, sound equipment alone cost us in the neighborhood of \$40,000,000. We certainly couldn't afford to make an investment like that in just one piece of equipment if we had assurance of using that for such a limited time, We couldn't afford to invest money in opening territories if we were assured of only one year in that territory.

- Q. What do you mean by opening ter-[1114] ritories? Explain that a little bit.
- A. Well, for example, up until about three months ago we didn't operate in the State of Arizona. We have spent no less than \$2500.00 to \$3000.00 in traveling expenses sending a man back and forth to sign up theaters there. We couldn't afford to have made that expenditure if we had been assured of only one year agreements. I feel that the only sound policy is to work to the end of having at least three or four or five year contracts with theatres.
- Q. What are the contracts that your company has averaged as to their term?
- A. They average about three years at the present time. The fact is, half of them are three to five fears, and the other half, I believe, are less than three years. They average about three years, but we work to get five year contracts where no guarantee is involved. If a guarantee is involved, then we sometimes have to limit that because we don't want to take the risk.
- Q. In those cases what would you say the term would be, with the guarantee?
- A. Usually we try to get three years, two to three years.
  - Q. Quite apart from the investment that is necessary

for you to make in building up the territory and traveling expenses and the other items you have just [1115] testified to, would you give us for the record here an analysis of how the time works when you get a screening agreement and then have to play that out. I wish you would break that down for us and show us the practical operation of that.

A. Well, if we get a screening agreement from a theater or certain theaters that are already running ads for some other company, that screen isn't really fully available to us until 14 to 15 months after we make the contract.

## Q. Why so?

cover the cost.

A. Because in all contracts the theater must agree to run to complet in the advertisers' contracts that you sell during the time of your agreement with him. Now, most advertisers' contracts are written for a year either every week or on an every other weeks schedule. Say, for example, we take over—to be specific, we will take certain theaters in Arizona that we just acquired, there is another film company that had had those theaters. The theaters furnish us a list of advertisers that are already sold by the other film company.

Q. Before the expiration of their contract?

A. Before the expiration. That shows that during the first six months of that contract we will have available to us less than 25 per cent of the space that we have bought from those theaters. It will be a year, it will be a little over a year, probably 14 to 15 months, before we get all of the space we bought, so we couldn't afford to make a one year deal with that theater and [1116] from a practical standpoint send salesmen out there and make the other additional investment which is required. We couldn't afford to increase our library to take care of that additional territory on a one

year deal because we wouldn't be assured of getting the usage out of the films that is necessary in order to re-

and we have to stand the expense of producing that

You see, we produce a library service

service. Now, unless we are assured of a certain outlet on those films or a certain amount of usage on those films, we couldn't afford to produce them.

- Q. Well, you say that most of the advertising contracts are made for a year, either to run every week or every other week?
  - A. Every week or every other week schedule.
- Q. Is it possible in those cases to display the advertisind exactly over the term of the advertiser's contract, what I mean is, does it take longer than a year to display advertising where the advertiser's contract calls for a year's run once a week for 52 weeks?
- A. No. On a library service it takes about 60 days to get the advertiser's contract started, which means that it would take 14 to 15 months to complete his deal. On a special film service where you have got to produce special films for the advertiser it might be from six months or maybe even a year after you sign the advertiser up before you could actually start him.
- [1117] Q. And in the case of a special film, if it called for 52 weeks and you had a special film it might take, say, something over 18 months, you mean, to run?
  - A. Eighteen months to two years.
- Q. What I was asking you was this: Even in the case where it called for one display each week for 52 weeks of a syndicated film, doesn't that advertiser in some cases have to wait his turn to get on the screen if you are already filled up, so that you can't actually run that out right from the minute of the contract for the next 52 weeks?
- A. No, unless he enters into that agreement. We control that to a certain extent by not letting our salesmen sell space that isn't available.
  - Q. Is it the custom of most advertisers to have followup or repeat advertising campaigns once the first contract is expired?
  - A. I don' think, Mr. Rosen, you could interest any worthwhile advertiser in the use of a medium unless you

could give that advertiser some assurance that he is going to be able to continue.

[1118] CROSS EXAMINATION

Q. (By Mr. Collins:) Mr. Mabry, when you take a contract with a theater and another distributor has advertising arrangements with the theater to screen advertising films it is understood that the theater will screen those advertisements out to the extent of the agreement, isn't it, to the time limit of the agreement?

A. Do I understand you to mean that when I acquire a theater do I have in my agreement with that theater provision whereby that theater can run to completion

advertisers' contracts that are already sold?

Q. Yes.

A. Yes, sir.

Q. Now, you have had arrangements with theaters for screening advertisements and some other distributor has taken that theater away from you or signed an exclusive contract with them, haven't you had that experience?

A. Yes, sir.

Q. Now, when you have that experience do they continue to run the advertisements that you have out to

completion? .

A. To a degree. Some of them will run them out for 12 months and others will have a run out period of only 60 or 90 days. During recent years there has been a tendency on the part of theaters to limit that run out period. My company has fought it very severely and we have been able to control it to an extent and get the theater to back up our agreement with the advertiser, but I find that in some cases the theater seems to have sold the other film company rather than the [1120] film distributor selling the theater, because they

Q. But you have followed the policy of running out the ads to the completion of the contract?

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say,

A. Yes, sir. We don't attempt to stand in the way of a theater completing an advertiser's contract.

Q. Now, when you get a contract with a theater do you wait about selling advertisements until all the adver-

tisements have run to completion?

A. No, sir. We wait until the other film company's selling privileges expire. In other words, we will not permit ourselves to go in and be selling in that town in competition with the other film company that might have been serving the advertisers or serving that territory, because it would cause too much confusion in the minds of the advertiser and would do the industry more harm than good.

Q. Well, now, you said something there about the other distributors' selling period had expired. When does

the selling period expire?

A. It expires when the contract expires, when the theater contract expires. Say, for example, a theater makes a contract for one year starting January first and expiring December thirty-first, the company holding that contract can sell right on up to December thirty-first.

Q. And that is the practice throughout, is

A. That is the practice throughout, but it is, with the trend that I mentioned to you a few moments ago of theaters attempting to limit the run out period, a very dangerous practice to continue to sell right up to the end of the contract because it takes you anywhere from 60 days to maybe six months or longer to service an advertiser's contract, so your servicing privileges on the theater might have expired before you actually got the advertiser on the screen.

Q. So your contract with the theater, then, really refers more to the selling period than it does to the

screening period, doesn't it?

A. To an extent. It all depends on the run out that the theater allows. If the theater allows you a run out period of 60 days then the two of them about run concurrently, but if he allows you a run out period of, say, a year, which we encourage because we naturally

want to sell contracts right up to the end of our contract, then the servicing period might run a year beyond the expiration of the agreement.

Q. And are those run out periods set forth in your screening agreement?

A. Yes, sir.

Q. And, of course, the run out period would be governed by that.

Now, Mr. Mabry, what percentage of your contracts would you say have a run out period of 60 days?

A. Ours?

[1122] Q. Yes.

A. In our case it wouldn't amount to even a fraction of 1 per cent. Practically all ours have an unlimited run out. We put that in there, anything we sell within the term of the contract, but the theater owner knows that we take only one year contracts with advertisers so naturally he understands that the run out would not be beyond a year after the selling period ax pired.

Q. Now, what percentage did you say of your con-

tracts were for five years?

A. About 25 per cent. You have that in the records, Mr. Collins. I gave you a list of it. It is approximately 25 per cent.

Q. Well, the reason that I was inquiring about it, I thought you had the information at hand. You were

testifying from something.

A. Yes, I do. I have it here. It is 25 per cent.

## [1123] REDIRECT EXAMINATION

Q: (By Mr. Rosen:) Mr. Mabry, in no case that you know of has any theater's screening agreement been made for a longer term than five years with your company?

A. Not with my company, no. Five years is the

maximum.

Q. Mr. Mabry, there have been two terms used here. I think, by Mr. Collins in his cross examination and just

so that is clear for the record let me ask you a question or two about it. Mr. Collins used two terms, the one was selling privileges, the term of the selling privileges, and the other was the term of the contract. Is there anything at all in any of those contracts with regard to the selling terms of the contract?

A. Indirectly, yes. The agreement states that any advertiser's contract sold during the term of his screening agreement will run to the completion of the advertiser's contract.

Q. But, I mean, they don't have two dates, one for the termination of a contract and one for the time in which you can sell advertising?

A. No, they run together. In other words, you can sell during the term of the contract but the theater might screen after the contract has expired under what we term the run out privilege.

Q. Well, in case the exhibitor has negotiated a new contract with some other distributor prior to the expiration of the term of your contract, do they ever notify you of that fact prior to the expiration date?

other film company cannot start selling until my agreement expires. Say I was notified in October, we might say, and his agreement starts in January, he cannot start selling until January if I have an agreement with that theater.

Q. Well, once your company is notified that you are no longer to have the screening at the expiration, is it your policy to go out then and start to sell as many advertising contracts as you can or do you stop? What do you do in that case?

A. It depends on the run out term in the contract. If the theater agreement had a run out of only 60 or 90 days, I wouldn't sell any more ads.

Mr. Burgess: I offer the following stipula-[1126] tion, that if called Mr. Levere Montgomery would testify that he was for a period of six years manager of the Joy Theater chain and that in that capacity he handled all of the matters for that chain in connection with theater screen advertising and that

for the first few years during his management theater screen advertising was shown on the screen of their theaters on a non-exclusive basis MPA, Commerce Pictures and Alexander and that the arrangement was unsatisfactory to them in that he had no method of determing the number of ads which might be shown on the screen at any one time, that it varied from two and sometimes to ten'at other times and that the income was irregular and unsatisfactory and he decided to make an arrangement with one company, that MPA, Commerce Pictures and Alexander all dealt with , him for the sole right to show the theater screen ads and that he selected Alexander Film Company and entered into a one year exclusive contract with them and did not contract with the other two because he had a better financial arrangement, with a minimum guarantee contract, with Alexander than the other two companies would offer him; that upon entering into the contract he notified both MPA and Commerce Pictures to cease selling ads on the screens of their theaters and notified them that they would run out the contracts that they then had in existence, that he is no longer associated with the Joy chain but that the arrangement was satisfactory and approved by them so long as he remained in his position with them, which terminated about a year after entering into the original contract.

I believe that is all.

Mr. Collins: I am willing to stipulate that the witness if called to testify, would testify to as stated by counsel.

Mr. Burgess: Mr. Examiner, I would also like to say that the testimony of Mr. Carrigan in the original proceeding last spring in which he related the facts of his being told that he could no longer continue to show advertising on the screen of the Joy chain.

Trial Examiner Kolb: Is that stipulation satisfactory to you, Mr. Collins?

Mr. Collins: Yes.

## CERTIFICATE

I, the undersigned, do hereby certify that I have this day served a copy of the above and foregoing appendix for petitioner and appellant on the attorney for the Federal Trade Commission, by depositing same in the United States mail, postage, prepaid, addressed to said attorney at the post-office address of the Federal Trade Commission in Washington, D. C.

December 3, 1951.

LOUIS L. ROSEN.

Attorney for Motion Picture Advertising Service Company, Inc., Petitioner and Appellant.